



## REQUEST FOR PROPOSALS

RFP No. 20-01

### Notice to Proposers

### Voters FIRST Act Drawing District Lines Training

**May 20, 2019**

You are invited to review and respond to this Request for Proposals (RFP): Voters FIRST Act: Drawing District Lines Training, RFP No. 20-01.

Proposers interested in responding to this RFP are encouraged to notify the California State Auditor's Office (State Auditor's Office) indicating their interest. This will ensure that your firm receives supplemental or updated information that may be released subsequent to the State Auditor's Office's formal issuance of the RFP. Send your intent to respond by email, postcard, or letter to Ms. Donnell Duclo and include the firm's name, address, and contact information by May 31, 2019.

In the opinion of the State Auditor's Office, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this RFP is:

Ms. Donnell Duclo, Business Services Analyst  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814  
916-445-0255  
E-mail: [Proposals@auditor.ca.gov](mailto:Proposals@auditor.ca.gov)

Please note that no verbal information given will be binding upon the State Auditor's Office unless such information is issued in writing as an official addendum.

Sincerely,

Ana Clark, Manager  
Business and Finance

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**REQUEST FOR PROPOSALS**

**RFP No. 20-01**

**Voters FIRST Act  
Drawing District Lines Training**

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## **I. PURPOSE AND DESCRIPTION OF SERVICES**

In this Request for Proposals (RFP), the California State Auditor's Office (State Auditor's Office) solicits qualified proposers to provide an effective training on the process of drawing district lines in California. Proposers are encouraged to read the Voters FIRST Act (Act) (Article XXI of the California Constitution and Government Code, section 8251 et seq.) in preparation for submitting a proposal. Additional information about the implementation of the Act is available on our website at [www.auditor.ca.gov](http://www.auditor.ca.gov).

### **A. Background**

1. The State Auditor's Office is an independent and non-partisan state entity that improves California government by assuring the accountability and transparency that its citizens deserve.
2. To staff the Citizens Redistricting Commission (Commission), the State Auditor's Office must initiate an extensive application and selection process every 10 years to select commissioners. The State Auditor's Office provides support functions to the Commission until its staff and office are fully functional.
3. The Commission is responsible for various duties and responsibilities in connection with redistricting Congressional, State Senate, State Assembly, and State Board of Equalization districts. The Commission must be established and functional by September 2020.
4. By August 15th in each year ending in the number nine, the State Auditor's Office shall initiate an application process, open to all registered California voters, in a manner that promotes a diverse and qualified application pool (Government Code section 8252 (a) (1)).
5. The State Auditor's Office shall establish an Applicant Review Panel (panel), consisting of three qualified independent auditors, that are responsible for screening applicants for the Commission. From the applicant pool, the panel will select 60 of the most qualified applicants on the basis of relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography (Government Code section 8252 (b) and (d)).
6. Prior to any member of the panel performing duties of a panel member, the State Auditor's Office shall provide the panel member with training in preparation for the performance of those duties. The training shall include the process for performing redistricting, including, but not limited to, the use of computer software to draw district lines. (Reference California Code of Regulations, Title 2, section 60832 (e)).

### **B. Statement of Work**

1. The State Auditor's Office seeks a Contractor to develop and provide up to three trainings on the process for drawing district lines using computer software.

2. One training must be scheduled between August 19 – 30, 2019. Participants will include the panel, panel alternates, panel legal counsel, and assigned staff members.
3. Two trainings must be scheduled between July 5, 2020 and September 30, 2020. The second training will include the first eight commissioners. The third training will include all 14 members of the newly selected 2020 Commission.
4. Specific training date(s) will be determined based on the availability of the Contractor and the State Auditor's Office.
5. The three trainings shall not exceed 6-8 hours each.
6. Training will be conducted during open meetings and livestreamed to maximize transparency and public participation.
7. The Contractor will provide training using the most recent data available to demonstrate the process and methods used during redistricting. The training should include at a minimum, one geographic feature, one community of interest, and one compactness issue. The Contractor should incorporate into their training an opportunity for participants to manipulate digital maps to create districts while attempting to comply with state and federal laws and court decisions relating to redistricting.
8. Proposers are expected to provide the training in an objective, non-partisan informational manner, and not attempt to persuade the participants in any way. Proposers are required to complete and submit a 2018/2019 Statement of Economic Interests Form 700, in compliance with the Fair Political Practices Act, from all proposed personnel. Proposers must also certify no conflicts of interest exist as listed in the Government Code, section 8252 (a).

### **C. Contractor Responsibilities and Deliverables**

The Contractor is responsible for the following items, as approved by the State Auditor's Office:

1. Develop a detailed outline for review and approval by the State Auditor's Office no later than 14 working days before the scheduled training date.
2. Training materials must meet current federal Section 508 accessibility requirements.
3. Meet all deadlines mutually agreed upon between the Contractor and State Auditor's Office. The Contractor acknowledges that it is critical that the training is delivered on schedule. The State Auditor's Office will notify the Contractor in writing of the approved dates.

### **D. State Auditor's Office Responsibilities**

The State Auditor's Office may request additional training services during the term of the contract. Requests will be in writing and mutually approved by the State Auditor's Office and Contractor.

## II. QUALIFICATIONS AND EXPERIENCE

The Contractor and all proposed personnel (excluding administrative support) performing professional services under the contract must have the qualifications and experience identified below:

### A. Minimum Qualifications and Experience

1. The Contractor must have experience drawing district lines for a statistical metropolitan area level with a population of at least 75,000 people.
2. The Contractor must provide a list of all projects for which the Contractor has drawn voting district maps for a redistricting process. For each process, the Contractor must identify:
  - (a) Whether any of their maps were challenged for failing to meet legal requirements and,
  - (b) Whether the maps that were subject to a legal challenge were implemented in substantially the same condition in which they were drawn.
3. Experience redistricting for varied political or interest groups.
4. Résumé. Provide résumés for each individual, including the lead personnel and supporting personnel to be utilized for this project. Include education, experience and expertise with pertinent information demonstrating qualifications for this RFP. Do not exceed two (2) pages per person.
5. Three examples of similar types of contracts in which the proposer conducted work to produce a voting district map for redistricting purposes. The listing should include:
  - (a) Title of the project.
  - (b) Name of the entity.
  - (c) Brief description of the project.
  - (d) Name and contact information of the entity's contracting officer.

By furnishing this information, the proposer gives permission to the State Auditor's Office to contact these entities regarding the proposer's past performance. If the firm is newly organized, a listing of projects completed by lead personnel during previous employment may be acceptable. Moreover, if the proposer is a joint venture, the experience of the joint venture may be combined.

6. Proof that the proposer, if a corporation, is in good standing and qualified to conduct business in California. Proposals must include a copy of a Certificate of Status issued by the California [Secretary of State](#). For non-profit proposers, provide proof of nonprofit status.
7. Copies of current business licenses, professional certifications or other relevant credentials.

8. Proof of financial solvency or stability (financial statements for the most recent two years; tax returns; records showing business base and forecast).
9. Identify by name the lead personnel projected to be assigned to the engagement. Contract terms will not permit substitution of lead personnel without prior written approval of the State Auditor's Office.
10. Include a list of prospective subcontractors proposed to use in performing the work, including a listing of the individuals the subcontractor proposes to assign to the engagement and the location where the work will be performed. The State Auditor, in her sole discretion, reserves the right to reject subcontractors. Subcontractors, if used, shall be subject to all terms, conditions, and qualifications required by this RFP.
11. Indicate where Section 508 compliance information is available on Electronic and Information Technology supplies and services and show where full details can be found (e.g. contactor's website or other location).

**B. Desirable Qualifications**

1. The Contractor should be nonpartisan. The State Auditor's Office conducts its work in a nonpartisan manner, free from outside influence, including that of the Legislature, Governor, and the subjects of audits and investigations. We seek non-partisanship for politically neutral training.
2. Demonstrated knowledge and experience drawing lines for state legislative or congressional districts. The Contractor shall have produced district maps for both a largest and second largest political party in California or a similarly diversely populated state.
3. Experience conducting similar trainings and or informational sessions.
4. Ability to perform training in Sacramento at the State Auditor's Office.
5. Ability to provide mobile and online computer-based training, if necessary.
6. Education. Undergraduate degree in business administration, public administration, policy management, political science, or relevant discipline.

### III. PROPOSAL REQUIREMENTS AND INFORMATION

Proposers may include any relevant information and pertinent exhibits in the proposal. Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this solicitation letter. It may include any relevant information and pertinent exhibits. Emphasis should be on conformance to the instructions and responsiveness to the requirements described herein, and on completeness and clarity of content.

#### A. Key Action Dates

The State Auditor’s Office will use its best efforts to adhere to the dates in Table 1. However, the State Auditor’s Office reserves the right to amend the time schedule, as deemed necessary. Changes will be accomplished by addendum.

**Table 1. Key Action Dates**

Action	Time	Date
Release of Request for Proposals		May 20, 2019
Questions Due	1:00 p.m.	May 28, 2019
Questions and Answers Posted		May 31, 2019
<b>Proposals Due</b>	<b>1:00 p.m.</b>	<b>June 13, 2019</b>
Evaluation Period		June 14 - 21, 2019
Notice of Intent to Award		June 24, 2019
Contract Award and Execution		July 2, 2019
Contract Work Begins		July 3, 2019
Contract Term Ends		October 30, 2020

#### B. Questions and Answers

- Review the Frequently Asked Questions posted to [Cal eProcure](#) and our [California State Auditor](#) website. Should Proposers have additional questions on the content of this RFP submit questions in writing to [Proposals@auditor.ca.gov](mailto:Proposals@auditor.ca.gov) by the date in Table 1. Key Action Dates. Clearly mark the subject line with “Questions Relating to RFP No. 20-01.”

#### C. Confidentiality

- The State Auditor’s Office appreciates a proposer’s desire to treat certain documents as confidential and will honor reasonable assertions of confidentiality if such claims are legally made. However, public contracting involves transparency and contracts with public entities generally are public records.

2. If the State Auditor's Office receives a request to disclose data claimed by the proposer to be confidential, the State Auditor's Office will notify the proposer of the request and state that the documents are under review to determine whether information was correctly identified as confidential. If there is any question of whether specific information is confidential, the State Auditor's Office will contact the person(s) identified in the RFP to obtain a justification and statement of why the information is confidential.
3. Any proposal that contains confidential information shall be prominently marked "CONFIDENTIAL" and shall identify the reasonable legal basis for confidentiality. The State will deem those portions of the proposal not marked "CONFIDENTIAL" releasable under the California Public Records Act.
4. Proposer shall not disclose data or disseminate the contents of any preliminary or final work product or records, documents, or information used in support of the work product without the written permission of the State Auditor's Office.
5. With the exception of comments made about the work product to the State Auditor or her staff, proposers shall not make comments to any individual, including, but not limited to, any member of the media, regarding the work product, nor shall proposer comment on the State Auditor's actions regarding the work product, without the prior written consent of the State Auditor's Office.

#### **D. Work Plan Requirements**

1. The proposer shall develop a training plan and detailed outline.
2. The proposal shall include a description of the overall approach to providing the services described in Section I, Purpose and Description of Services. The proposal must include specific techniques, administrative and operational management expertise, and the use of computer software to draw district lines as described in this RFP.

#### **E. Cost Detail Requirements**

There is no set budget for this engagement. The proposal shall include a detailed quotation of costs for all services that could be charged to the State Auditor's Office. The cost must include the following level of detail.

1. The proposal shall include a quotation of charges for all proposed work.
2. The cost component shall include the total number of hours required for each training, and contain a cost quotation of charges for each class of personnel.
3. The State Auditor's Office will pay only for hours actually worked at the rates submitted and for actual expenses incurred subject to limitations contained in this RFP. As a guide, use the Cost Proposal Worksheet (**Attachment C**). Include the following costs:
  - (a) Direct labor costs (personnel classification, number of hours, and hourly rates).

- (b) Travel to various locations in the State may be required. The rates for travel-related expenses shall not exceed the rates established for excluded employees of the State of California. The Contractor may obtain current rates at the following website: [California Department of Human Resources](#).

**F. Statement of Economic Interests Form 700, Certifications of No Conflict of Interest, and Political Affiliation**

1. The proposer must submit a 2018/2019 Statement of Economic Interests [Form 700](#) using full disclosure from all proposed personnel.
2. The proposer must submit the Contractor Certification Clauses (**Exhibit J**) and certify that within the 10 years immediately preceding submission of the proposal, the Contractor, all proposed personnel, and their immediate family did not do anything listed in the Government Code, section 8252 (a).
3. Proposers that advance beyond the initial elimination process are required to complete a certification of political affiliation.

**G. Submission of Proposals**

1. Proposals to this request constitute an express acceptance of all provisions of this RFP, including all attachments, exhibits, and schedules. If a proposer indicates an unwillingness to accept any provision, the State Auditor's Office may reject its proposal. However, the State Auditor, at her sole discretion, may negotiate with the proposer on specific provisions of the final agreement not required by law.
2. Proposers should provide straightforward and concise descriptions of their ability to satisfy the requirements of this RFP. The proposal must be complete and accurate.
3. Costs incurred for developing proposals, in anticipation of award of the agreement, are entirely the responsibility of the proposer, and shall not be charged to the State. The State Auditor's Office reserves the right to cancel the RFP if it is in its best interest to do so.
4. Proposers shall submit six (6) legible proposals. One original proposal must be marked "ORIGINAL COPY," and must have original signatures. Five (5) additional proposals may contain photocopies of the original proposal.
5. The original and five copies of the proposal shall be double-sided to conserve paper and should be prepared in the least expensive method. Do not bind the original or copies.
6. The font shall be in Arial or Times New Roman and 12 point.
7. An individual who is authorized to bind the proposing firm contractually shall sign the Proposal/Proposer Certification Sheet (**Attachment B**). The signature must indicate the title or position that the individual holds in the firm.
8. Before submitting a response to this solicitation, proposers should review, correct all errors, and confirm compliance with the RFP requirements.

9. Time is of the essence. Proposals must be submitted and received by the due date and time listed in Table 1, Key Action Dates, and shall be delivered via Federal Express or other similar delivery service, messenger or courier service. Late proposals will not be accepted. **Email proposals are not acceptable.**
10. Mailed or delivered proposals shall be sent in a sealed envelope, clearly marked "**Response to RFP No. 20-01,**" addressed to Ms. Donnell Duclo, Business Services Analyst, and marked **DO NOT OPEN.**

California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

11. The State Auditor's Office will not consider more than one proposal from an individual, firm, partnership, corporation or association under the same or different names.
12. If the proposal is made under a fictitious name or business title, the actual legal name of the proposer must be provided.
13. No oral understanding or agreement shall be binding on either party.
14. All proposals shall include the documents identified in Section V, Required Attachment Checklist (**Attachment A**).
15. Confidential Proposal Information. Any components of the proposal reflecting trade secrets or other confidential information shall be prominently marked "CONFIDENTIAL" and shall identify the reasonable legal basis for confidentiality. The State will deem those of the proposal portions not marked "CONFIDENTIAL" releasable under the California Public Records Act.
16. Modification or Withdrawal of Proposals. Any proposal that the State Auditor's Office receives before the deadline to submit proposals may be withdrawn or modified by written request of the Contractor. However, to be considered, the modified proposal must be received by the deadline.
17. Modification or Amendment of This Request. This RFP may be modified at any time prior to the time set for receipt of proposals and thereafter as long as no proposal has been opened. Upon any such modification, all proposers will be notified, and any person or firm who has expressly requested such notice in writing will be notified. However, persons or firms who have been invited to propose, but who have not indicated their interest in writing, may not be notified of such changes at the discretion of the State Auditor's Office.
18. Proposals must be complete in all respects and submitted by the due date and time shown in Section III, Paragraph A, Table 1. Key Action Dates.

## H. Rejection of Proposals

Submitted proposals may be rejected for any of the following reasons:

1. Right to Reject Any or All Proposals. The policy of the State Auditor's Office is to solicit proposals with a bona fide intention to award a contract. The State

Auditor, in her sole discretion, may reject proposals submitted in response to this RFP, without regard to the cost or quality of any proposal, or other considerations, upon determination that it is in the best interest of the State Auditor's Office to do so.

2. The State cannot negotiate contract terms and conditions mandated by law.
3. The State Auditor, in her sole discretion, reserves the right to reject any individual proposed to be assigned to the engagement.
4. Proposals not including the required attachments shall be deemed non-responsive and will be rejected.
5. Omissions, inaccuracies or misstatements will be sufficient cause for rejection of a proposal.
6. A proposal may be rejected if it is conditional, incomplete, or it contains any alterations of form or other irregularities.
7. Proposals that contain false or misleading statements or that provide references that do not support an attribute or condition claimed by the proposer may be rejected.

#### **I. Notice of Payment Terms**

The invoicing and payment terms are in Section VI, Sample Standard Agreement, Exhibit B - Sample Budget Detail and Payment Provisions.

#### **J. Evaluation and Scoring Process**

1. The State Auditor's Office will evaluate proposals and an award, if made, will be to the technically qualified proposer earning the highest score.
2. At the time of proposal opening, each proposal will be checked for the presence or absence of required information in conformance with Section III, Proposal Requirements and Information.
3. Proposals that meet the minimum qualifications will be evaluated and scored in accordance with the criteria in the RFP. The Evaluators will use the Explanation of Points in Table 2 and Scoring Criteria in Table 3 to evaluate the proposals. The Evaluators will score the Phase 1 and 2 Scoring Criteria of the RFP on a consensus basis.
4. Phase 1 – Technical Aspects of Proposal Evaluation. There are 60 total points available in this section for the three criteria stated. A minimum score of 40 points out of 60 is required to continue to Phase 2.
5. Phase 2 – Organization Capabilities Evaluation. There are a total of 40 points possible in this section for the two criteria provided. A zero score will be assessed on any proposer not scoring the minimum in Phase 1.
6. Phase 3 – Cost Evaluation. The technically qualified proposer in Phase 1 and 2 above with the lowest cost will receive 30 points. The remaining proposals will

receive an incrementally lower cost score as indicated in the example in Paragraph 7 below.

7. The technically qualified proposal with the lowest cost will receive the maximum cost points. The remaining proposals will be awarded cost points based on the calculations. All cost figures are purely hypothetical in the example below.

Lowest Proposer's Cost = (factor) X maximum cost points = cost points for other proposer(s)

EXAMPLE of other proposer's cost based on 30 cost points available

Lowest Cost Proposal = \$75,000, next Lowest Proposal = \$100,000  
\$75,000 divided by \$100,000 = .75 x 30 = 22.5 cost points awarded to other proposal

8. The evaluation team will abide by the guidelines in Table 2. Explanation of Points to assign points for the scoring criteria. A zero score in any field will result in disqualification and that proposer's total score will not be calculated, as it will be deemed as not technically qualified.

**Table 2. Explanation of Points**

Points	Description	Explanation
0	Inadequate	Response fails to address the requirements. The omission(s), flaw(s), or defect(s) are significant and unacceptable.
5	Barely Adequate	Response barely addresses the requirements and includes multiple omissions, flaws, or defects.
10	Average	Response addresses the requirements with an average degree of confidence. The requirements are addressed in a limited way that results in a moderate degree of confidence in the proposed solution.
15	Good	Response fully addresses the requirements with a good degree of confidence. No omissions, flaws, or defects. Any identified weaknesses are minimal and acceptable.
20	Excellent or Outstanding	Response fully addresses the requirements with a high degree of confidence in the proposer's response or proposed solution. Proposer offers one or more enhancing methods or approaches and exceeds basic expectations.

**Table 3. Scoring Criteria**

<b>Scoring Criteria</b>	<b>Possible Points</b>
<b>Phase 1 - Technical Aspects of Proposal</b>	
There are 60 points possible in this phase. Proposals with a score of 40 points or more will move to Phase 2.	
Quality of approach and methodology	20
Clarity and succinctness of proposal	20
Demonstrated knowledge and experience drawing lines for state legislative or congressional districts.	20
<b>Phase 2 - Organizational Capabilities</b>	
There are 40 points possible in this phase.	
Demonstrated ability to successfully perform training	20
Qualifications and experience of management and lead staff to be assigned to the project	20
<b>Phase 3 – Cost</b>	
All technically qualified proposers cost proposals will be scored. Paragraph 7 includes a formula to calculate the cost points.	
<b>TOTAL SCORE</b>	
<b>130</b>	

9. Proposers are required to complete a certification of political affiliation.
10. If no proposals are received containing bids offering a price which, in the opinion of the State Auditor’s Office, is a reasonable price, the State Auditor’s Office is not required to award an agreement.
11. In the event of a tie bid in scoring, the affected bidders are invited to witness the tiebreaker coin toss at the State Auditor’s Office.
12. During the evaluation and selection process, the State Auditor’s Office may request the proposer's representative answer specific questions, orally and/or in writing. If discrepancies between sections or other errors are found in a final proposal, the State Auditor’s Office may reject the proposal; however, the State Auditor may in her sole discretion, retain the proposal and correct any arithmetic or transposition errors in price or quantity. The State Auditor will notify all proposers of her decision to award the contract.

## **K. Award and Protest**

1. Notice of the proposed award shall be posted in a public place at the [California State Auditor's Office](#) and on its website at least five (5) working days prior to awarding the agreement.
2. If any proposer, prior to the award of agreement, files a protest with the State Auditor's Office on the grounds that the (protesting) proposer would have been awarded the contract had the State Auditor's Office correctly applied the evaluation standard in the RFP, or if the State Auditor's Office followed the evaluation and scoring methods in the RFP, the agreement shall not be awarded until either the protest has been withdrawn or the State Auditor's Office has decided the matter. It is suggested that you submit any protest by certified or registered mail.
3. Within five (5) days after filing the initial protest, the protesting proposer shall file a detailed statement specifying the grounds for the protest.

## **L. Disposition of Proposals**

1. All proposals will become property of the State of California and will, along with the summaries of evaluations, be regarded as public records under the California Public Records Act and be available to the public for inspection at the conclusion of the committee scoring process. Proprietary information, as reasonably identified by the proposer, in the proposals will remain confidential as permitted by law. To prevent its release to the public, the proposer must indicate what information in the proposal is proprietary, along with a citation to the relevant provisions of law exempting or precluding that information from public disclosure.
2. Proposals may be returned at the proposer's expense, unless such expense is waived by the State Auditor's Office.

## **M. Agreement Execution and Performance**

Section VI. includes a sample Standard Agreement along with all possible exhibits and attachments that may apply. Proposers should review the Standard Agreement in its entirety.

1. The Contractor's services shall start not later than 5 days, or on the express date set by the State Auditor's Office and the Contractor, after all approvals have been obtained and the agreement is fully executed. Should the Contractor fail to commence work at the agreed-upon time, the State Auditor's Office, upon five (5) days' written notice to the Contractor, reserves the right to terminate the agreement. In addition, the Contractor shall be liable to the State for the difference between Contractor's proposal price and the actual cost of performing work by another Contractor.
2. All performance under the agreement shall be completed on or before the termination date of the agreement.

3. Contract Subject to Appropriation. Payment under the contract will be subject to appropriation of sufficient funds by the Legislature to the State Auditor's Office to cover the costs of the services described in this RFP.

## IV. PREFERENCE PROGRAMS

### A. Small Business Preference Program

1. The proposal should include a statement indicating whether or not the firm claims a small business preference and proposers should certify their small business certification using the Bidder Declaration (**Attachment D**).
2. This RFP does not include a minimum Small Business (SB) participation preference. Bidders claiming the 5 percent preference must be certified by California as a small business or must commit to subcontract at least 25 percent of the net bid price with one or more California Certified Small Businesses (CCSB).
3. To claim the CCSB preference, which may not exceed 5 percent for any bid, the firm must have its principal place of business located in California, have a complete application (including proof of annual receipts) on file with the California Office of Small Business and DVBE Services by 4:00 p.m. on the proposals due date and time listed in Section III, Paragraph A, Table 1. Key Action Dates and be verified by such office.
4. If the proposer receives the CCSB preference, the score assigned to its proposal will be increased by an amount equal to 5 percent of the points assigned to the highest scored proposal.

### B. Disabled Veteran Business Enterprise (DVBE) – Declaration and Program Incentive

1. The DVBE Incentive Program applies to this solicitation. It is separate from the DVBE Participation Program. This solicitation DOES NOT include a minimum DVBE participation requirement. **DVBE participation is not required in the bid or proposal.**
2. The incentive is used only for evaluation purposes to arrive at the successful bidder and does not alter the amounts of the actual bid. Any responsive and responsible bidder with the confirmed DVBE Participation per Table 4 is eligible to receive the incentive, which will be between 1 percent and 5 percent of the total possible available points, not including points for socioeconomic incentives or preferences. Bidders who are not responsive or responsible, regardless of the amount of DVBE participation, are not eligible to receive the incentive.
3. The State Auditor's Office will apply the incentive to bids proposing the utilization of Department of General Services (DGS) Certified DVBE firms identified in the Bidder Declaration (**Attachment D**). Information provided on the Bidder Declaration shall be verified by the State Auditor's Office prior to award of the contract. The incentive points are included in the sum of non-cost points based on the amount of the DVBE participation in the bid being evaluated in Table 4. When applying the DVBE Incentive, a Non-Small Business shall not displace an award to a DGS Certified Small Business.

**Table 4. DVBE Participation (High Score Awards)**

Verified DVBE Participation	DVBE Incentive Amount
5% or More	5%
4% - 4.99 %	4%
3% - 3.99%	3%
2% - 2.99%	2%
1% - 1.99%	1%

**C. Target Area Contract Preference Act**

Proposers requesting the Target Area Contract Area Preference shall submit a completed preference request form (**Attachment G**) and shall comply with all of the following:

1. Contractor agrees to comply with the requirements of the Target Area Contract Preference Act (Government Code section 4530, et seq.) and attendant rules and regulations (California Admin. Code, Title 2, section 1896.30, et seq.).
2. Contractor agrees that the State Auditor’s Office will have the right to inspect its facilities and operations and to inspect, review, obtain, and copy all records pertaining to performance of the contract or compliance with the requirements of the Act and attendant rules and regulations. Contractor further agrees that such records shall be maintained for a period of three (3) years after the final payment under the contract.
3. Contractor agrees with respect to a certification to hire persons with high risk of unemployment, to:
  - (a) Act in good faith for the purpose of maintaining such persons as employees for the duration of the contract performance; and
  - (b) To make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons with high risk of unemployment; and
  - (c) To promptly report to the State Auditor’s Office and thereafter confirm in writing within seven (7) days the names of such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate the reasons for the termination or absence. Contractor agrees under such circumstances to consult with the State Auditor’s Office and the Employment Development Department with respect to replacement of such persons.

## **V. REQUIRED ATTACHMENTS**

- Attachment A: Required Attachment Checklist
- Attachment B: Proposal/Proposer Certification Sheet
- Attachment C: Cost Proposal Worksheet (sample)
- Attachment D: Bidder Declaration
- Attachment E: Darfur Contracting Act Certification
- Attachment F: Target Area Contract Preference Act
- Attachment G: California Civil Rights Law Certification
- Attachment H: Statement of Economic Interests Form 700
- Attachment I: Contractor Certification Clauses

**ATTACHMENT A - REQUIRED ATTACHMENT CHECKLIST**

A responsive proposal shall include the requirements identified in Section III of this RFP, all required attachments, and be submitted by the proposal due date listed in Table 1, Key Action Dates. A complete proposal package will consist of the items identified below. Place a check mark or “X” in the Check column to confirm the items are in your proposal.

**Table 5.** Required Attachment Checklist

Check	Description	Attachment
_____	One original proposal with original signatures, printed double-sided	
_____	Five photocopies of the original proposal, printed double-sided	
_____	Required Attachment Checklist	Attachment A
_____	Proposal/Proposer Certification Sheet	Attachment B
_____	Cost Proposal Worksheet	Attachment C
_____	Bidder Declaration	Attachment D
_____	Darfur Contracting Act Certification	Attachment E
_____	Target Area Contract Preference Act	Attachment F
_____	California Civil Rights Laws Certification	Attachment G
_____	Statement of Economic Interests Form 700	Attachment H
_____	Contractor Certification Clauses	Attachment I

## ATTACHMENT B - PROPOSAL/PROPOSER CERTIFICATION SHEET

This Proposal/Proposer Certification Sheet must be signed and returned along with all the required attachments as an entire package in duplicate with **original signatures**. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions. **An unsigned proposal/proposer certification sheet may be cause for rejection.**

- A. Place all required attachments behind this certification sheet.
- B. I have read and understand the DVBE Participation requirements and have included documentation demonstrating that I have met the participation goals or have made a good faith effort. **DVBE participation is not required in this proposal.**
- C. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

1. Company Name: \_\_\_\_\_

2. Address: \_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

Organization type:

4.  Sole Proprietorship    5.  Partnership    6.  Corporation/LLC

7. Federal Employee ID No: \_\_\_\_\_

8. California Corporation/LLC No.: \_\_\_\_\_

9. License and/or certification information: \_\_\_\_\_

10. Proposer's Name (Print): \_\_\_\_\_

11. Title (Print): \_\_\_\_\_

12. **Signature:** \_\_\_\_\_    **13. Date:** \_\_\_\_\_

14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as a Small Business Enterprise or Disabled Veteran Business Enterprise?

Small Business Enterprise: Yes  Certification number: \_\_\_\_\_ No

Disabled Veteran Business Enterprise: Yes  Certification number: \_\_\_\_\_ No

If Yes is checked, include a copy of your certification. If your application is pending with OSBCR, include the date the application was submitted. \_\_\_\_\_

**ATTACHMENT B1 - INSTRUCTIONS FOR PROPOSAL/PROPOSER  
CERTIFICATION SHEET**

Complete the numbered items by following the instructions below.

**Table 4. Proposal/Proposer Certification Sheet Instructions.**

<b>Item Numbers</b>	<b>Instructions</b>
<b>1, 2, 3</b>	Must be completed. These items are self-explanatory.
<b>4</b>	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
<b>5</b>	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
<b>6</b>	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
<b>7</b>	Enter your federal employee tax identification number.
<b>8</b>	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
<b>9</b>	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
<b>10, 11, 12, 13</b>	Must be completed. These items are self-explanatory.
<b>14</b>	If certified as a California Small Business, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veterans Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to the California Office of Small Business and DVBE Services.

**ATTACHMENT C - COST PROPOSAL WORKSHEET**

Proposers may format the Cost Proposal Worksheet to suit their needs. There is no set budget for this engagement. The proposal shall include a detailed quotation of costs for all services that could be charged to the State Auditor’s Office. The cost must include the following level of detail.

1. The proposal shall include a quotation of charges for all proposed work.
2. The cost component shall include the total number of hours required to produce the deliverable, and contain a cost quotation of charges for each class of personnel.
3. The State Auditor’s Office will pay only for hours actually worked at the rates submitted and for actual expenses incurred subject to limitations contained in this RFP. As a guide, use the Cost Proposal Worksheet (**Attachment C**). Include the following costs:
  - (a) Direct labor costs (personnel classification, number of hours, and hourly rates).
  - (b) Travel to various locations in the State may be required. The rates for travel-related expenses shall not exceed the rates established for excluded employees of the State of California. The Contractor may obtain current rates at the following website: [California Department of Human Resources](http://www.dir.ca.gov).

Direct Labor	Hours	Rate	Total
Job title/description			\$
Job title/description			\$
<b>Total</b>			\$
<b>Subcontractor(s) Cost Itemized</b>			\$
Travel			\$
<b>TOTAL COSTS</b>			<b>\$</b>

## ATTACHMENT D - BIDDER DECLARATION

A fillable Bidder Declaration form GSPD-05-105 and instructions can be found at [the Department of General Services](#).

State of California—Department of General Services, Procurement Division  
GSPD-05-105 (REV 08/09)

Solicitation Number

### BIDDER DECLARATION

1. Prime bidder information (**Review attached Bidder Declaration Instructions prior to completion of this form**):
  - a. Identify current California certification(s) (**MB, SB, NVSA, DVBE**):  or None  (If "None," go to Item #2)
  - b. Will subcontractors be used for this contract? Yes  No  (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.
  - c. If you are a California certified DVBE: (1) Are you a broker or agent? Yes  No   
(2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? Yes  No  N/A

2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, NVSA, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**CERTIFICATION:** By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.

Page  of

Note: a signature is not required on this form.

**ATTACHMENT E - DARFUR CONTRACTING ACT CERTIFICATION**

Pursuant to Public Contract Code section 10478, if a bidder or Contractor currently or within the previous three (3) years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, write your company name and Federal ID Number and **complete only one** of the following three options (via initials for Option 1 or 2, or via initials and certification for Option 3).

\_\_\_\_\_  
Firm Name (Print)

\_\_\_\_\_  
Federal ID Number

\_\_\_\_\_  
Print Name and Title of Person Initialing (for options 1 or 2)

1. We do not currently have, and have not had within the previous three years, business activities or other operations outside of the United States.

\_\_\_\_\_  
Initials

**OR**

2. We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

\_\_\_\_\_  
Initials

**OR**

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

\_\_\_\_\_  
Initials +  
Certification Below

**Certification for Option 3.**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in option 3. This certification is made under the laws of the State of California.

\_\_\_\_\_  
By (Authorized Signature)

\_\_\_\_\_  
Date Executed

\_\_\_\_\_  
Print Name and Title of Person Signing (for option 3)

\_\_\_\_\_  
Executed (County  
and State)

## **ATTACHMENT F - TARGET AREA CONTRACT PREFERENCE ACT**

The Target Area Contract Preference Act economic stimulus preference program was established to stimulate business investment in distressed areas of the state and create job opportunities for Californians for improving the economic vitality of their communities.

Proposers requesting the Target Area Contract Area Preference shall submit a completed preference request form and shall comply with all of the following:

The fillable form and additional information can be found at the Department of General Services website at [TACPA Preference Request Std. 830](#).

**ATTACHMENT G - CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION**

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract over \$100,000 on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. CALIFORNIA CIVIL RIGHTS LAWS: For contracts over \$100,000 executed or renewed after January 1, 2017, the Contractor certifies compliance with the Unruh Civil Rights Act (Civil Code section 51) and the Fair Employment and Housing Act (Government Code section 12960); and
  
2. EMPLOYER DISCRIMINATORY POLICIES: For contracts over \$100,000 executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Civil Code section 51) or the Fair Employment and Housing Act (Government Code section 12960).

**CERTIFICATION**

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	Federal ID Number
Proposer/Firm Name (Print)	
By (Authorized Signature)	
Print Name and Title of Person Signing	
Date Executed	Executed in the County and State of

**ATTACHMENT H – STATEMENT OF ECONOMIC INTERESTS FORM 700**

A fillable Form 700 is available on the California [Fair Political Practices Commission](#) website.

**ATTACHMENT I – CONTRACTOR CERTIFICATION CLAUSES**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Proposer Firm Name (Printed)	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in the County of

1. **STATEMENT OF NO CONFLICTS:** Within the 10 years immediately preceding the date of this certification, the Contractor, all personnel assigned to perform contract work, and their immediate family, have not done anything listed in the Government Code, Section 8252 (a).
2. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Government Code section 12990 (a-f) and California Code of Regulations, Title 2, section 11102) (Not applicable to public entities.)
3. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - (b) Establish a Drug-Free Awareness Program to inform employees about:
    - 1) The dangers of drug abuse in the workplace.
    - 2) The person's or organization's policy of maintaining a drug-free workplace.
    - 3) Any available counseling, rehabilitation and employee assistance programs.
    - 4) Penalties that may be imposed upon employees for drug abuse violations.
  - (c) Every employee who works on the proposed Agreement will:
    - 1) Receive a copy of the company's drug-free workplace policy statement.

- 2) Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code section 8350 et seq.)

4. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Public Contract Code section 10296) (Not applicable to public entities.)
5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286 and 10286.1, and is eligible to contract with the State of California.
6. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.
7. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the State Auditor must be contacted immediately for clarification.

Current State Employees (Public Contract Code section 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.

Former State Employees (Public Contract Code section 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she

engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Public Contract Code section 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contract Code section 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 United States Code 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
  - (a) When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.
  - (b) "Doing business" is defined in Revenue and Taxation Code section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Contractor performing within the State not be subject to the franchise tax.

- (c) Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
7. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

## **VI. SAMPLE STANDARD AGREEMENT (STD.213)**

- Exhibit A - Sample Scope of Work and Description of Services
- Exhibit B - Sample Budget Detail and Payment Provisions
- Exhibit C - General Terms and Conditions
- Exhibit D - Special Terms and Conditions
- Exhibit E - Encryption and Information Privacy Policy
- Exhibit F - Confidentiality/Nondisclosure Statement
- Exhibit G - Darfur Contracting Act Certification
- Exhibit H - Target Area Contract Preference Act
- Exhibit I - California Civil Rights Law Certification
- Exhibit J - Contractor Certification Clauses
- Exhibit K - Payee Data Record (Std. 204)

## VI. SAMPLE - STANDARD AGREEMENT (STD. 213)

**Example Only. Do not complete or return the sample Standard Agreement.**

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
STD 213 (Rev 06/15)

AGREEMENT NUMBER <b>CSA-C-XXX-XXXX</b>
---

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME  
**CALIFORNIA STATE AUDITOR**

CONTRACTOR'S NAME  
**CONTRACTOR'S NAME**

2. The term of this Agreement is:

**DATE** through **DATE**

3. The maximum amount of this Agreement is:

**AMOUNT DOLLARS AND NO CENTS (\$XXX.00)**

4. The parties agree to comply with the terms and conditions of this Agreement, including the following exhibits and attachments marked with an , which are, by this reference, fully incorporated and made a part of the Agreement.

- |  |         |
|--|---------|
| <input checked="" type="checkbox"/> Exhibit A – Scope of Work and Description of Services    | x pages |
| <input checked="" type="checkbox"/> Exhibit B – Budget Detail and Payment Provisions         | x pages |
| <input checked="" type="checkbox"/> Exhibit C – General Terms and Conditions                 | x pages |
| <input checked="" type="checkbox"/> Exhibit D – Special Terms and Conditions                 | x pages |
| <input checked="" type="checkbox"/> Attachment 1 – Encryption and Information Privacy Policy | x pages |
| <input checked="" type="checkbox"/> Attachment 2 – Confidentiality/Nondisclosure Statement   | x pages |
| <input checked="" type="checkbox"/> Attachment 3 – Darfur Contracting Act Certification      | x pages |
| <input checked="" type="checkbox"/> Attachment 4 – California Civil Rights Law Certification | x page  |
| <input checked="" type="checkbox"/> Attachment 5 – Contractor's Résumé                       | x page  |

**IN WITNESS WHEREOF, the parties have executed this Agreement hereto.**

<b>CONTRACTOR</b>	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>CONTRACTOR</b>	
BY (Authorized signature)	DATE SIGNED (Do not type.)
PRINTED NAME AND TITLE OF PERSON SIGNING <b>CONTRACTOR AND TITLE</b>	
ADDRESS <b>ADDRESS</b>	
<b>STATE OF CALIFORNIA</b>	
AGENCY NAME <b>CALIFORNIA STATE AUDITOR</b>	
BY (Authorized signature)	DATE SIGNED (Do not type.)
PRINTED NAME AND TITLE OF PERSON SIGNING <b>ELAINE M. HOWLE, STATE AUDITOR</b>	
ADDRESS <b>621 Capitol Mall, Suite 1200, Sacramento, CA 95814</b>	

## EXHIBIT A – SAMPLE SCOPE OF WORK AND DESCRIPTION OF SERVICES

### 1. PURPOSE OF AGREEMENT

- (a) The State and the Contractor enter into this Agreement for the purpose of [Contractor's Name] to provide training services to the California State Auditor (State).
- (b) \_\_\_\_\_ is essential to providing training services under this Agreement. No other individual employed by the Contractor may perform services under the Agreement.

### 2. DATE, TIME, AND LOCATION

- (a) The Contractor shall conduct the workshop at the date and time specified below. However, at the written request of the Project Coordinator identified in paragraph 5, and with the written approval of the Contractor, the parties may agree to modify the date and time of the class without amending this Agreement. The date and time modification must occur in writing no later than \_\_\_\_\_.

**Workshop Title:** \_\_\_\_\_

**Date and Time:** \_\_\_\_\_ from \_\_\_\_\_

**Outline Due:** \_\_\_\_\_

- (b) The Contractor shall conduct the class at a location designated by the Project Coordinator.

### 3. SUBMISSION AND APPROVAL OF COURSE OUTLINE

- (a) Not less than fourteen (14) days before the scheduled date of the workshop, the Contractor shall develop a detailed outline of the content of the class and submit this "course outline" to the Project Coordinator specified in paragraph 5 for review. The deadline for submitting the course outline for the workshop is specified in paragraph 2.
- (b) The Project Coordinator will review the course outline submitted by the Contractor and either approve the content of the workshop or require modifications to it. The Project Coordinator must approve the content of the workshop not less than seven (7) days prior to the scheduled date of the workshop or the workshop will not take place.
- (c) Any change in the scheduled date of a workshop will not alter the duty of the Contractor to submit a course outline for the workshop to the Project Coordinator at least fourteen (14) days prior to the rescheduled date of the workshop or for the Contractor to obtain the Project Coordinator's approval of the content of the workshop at least seven (7) days prior to the rescheduled date of the workshop.

**4. WORKSHOP CONTENT**

The workshop listed in paragraph 2 shall include the content shown below.

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**5. PROJECT REPRESENTATIVES**

<b>California State Auditor</b>	<b>Contractor</b>
Business Services Coordinator: <b>Ana Clark, Manager Fiscal and Business Services</b>	Company:
Project Coordinator: <b>Stephanie Ramirez-Ridgeway Chief Legal Counsel</b>	Name, Title:
Address: <b>621 Capitol Mall, Suite 1200 Sacramento, CA 95814</b>	Address:
Phone: <b>(916) 445-0255</b>	Phone:
Fax: <b>(916) 327-0019</b>	Fax:
Email:	Email:

## EXHIBIT B – SAMPLE BUDGET DETAIL AND PAYMENT PROVISIONS

### 1. AMOUNT PAYABLE

The total amount payable under this Agreement may not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) and is payable as follows:

- (a) In exchange for providing the promised services and other deliverables specified in **Exhibit A** of this Agreement, the State shall pay the Contractor \$\_\_\_\_\_ for the training and a maximum of \$\_\_\_\_\_ for travel expenses.
- (b) The Contractor shall arrange for any travel required under this Agreement, the State shall reimburse the Contractor for documented travel and living expenses incurred by the Contractor, in providing the consulting services that are the subject of this Agreement at locations other than the Contractor's usual place or places of business. Reimbursement shall be made as follows:
  - (i) Airfare: commercial carrier coach fare rate, if supported by a receipt.
  - (ii) Other transportation: actual, reasonable expense, if supported by a receipt.
  - (iii) Living expenses: actual expenses, not to exceed maximum state employee per diem rates, to be claimed and computed in accordance with [Department of Human Resources](#) travel reimbursement regulations in effect for excluded employees when the expenses are incurred, if supported by a receipt.
- (c) The consideration to be paid to the Contractor, as provided herein, is in compensation for all of the Contractor's expenses incurred in performance of this Agreement, including travel per diem, and taxes, unless otherwise expressly so provided.
- (d) No minimum amount of work is guaranteed under this Agreement.

### 2. PAYMENTS

- (a) Whenever payment is owed by the State, the Contractor shall submit invoices on a monthly basis by the tenth (10<sup>th</sup>) day of each month. The invoices shall include a separate itemized accounting of all charges, including appropriate original receipts for travel and other administrative expenses.
- (b) Mail the original invoice and a duplicate to:  
  
**California State Auditor  
Attention: Accounting  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814**
- (c) The Contractor shall keep and preserve all back-up documentation to support the entries included in its invoices submitted to the State for a period of three (3) years after final payment is made unless a longer period of records retention is agreed upon. The Contractor agrees to allow the State Auditor access to such records during normal business hours and to allow interviews of any employees who reasonably might have information related to such records.

- (d) As a necessary precursor to receiving payment from the State, the Contractor, unless a state agency or other governmental entity, shall maintain on file with the State a completed Payee Data Record (STD 204).

### **3. BUDGET CONTINGENCY CLAUSE**

- (a) It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- (b) If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

### **4. PROMPT PAYMENT CLAUSE**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with section 927.

## **EXHIBIT C – GENERAL TERMS AND CONDITIONS**

### **1. TERM**

- (a) The term of this Agreement is \_\_\_\_\_, 2019 through \_\_\_\_\_, 2020 inclusive, except that Paragraphs 7, 8, 9, 10, 11, 12, and 13 of this **Exhibit C** and Paragraphs \_\_\_\_\_ of **Exhibit D** shall apply beyond this term and shall remain in effect notwithstanding any termination of the Agreement.
- (b) The parties mutually may agree in writing to extend the term of this Agreement.
- (c) All references to the term of the Agreement or the Agreement term shall include any extensions of the term.

### **2. APPROVAL**

This Agreement is of no force or effect until signed by both parties.

### **3. TIMELINESS**

Time is of the essence, including any schedule established by the Agreement for the performance of services.

### **4. NOTICE**

- (a) All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing.
- (b) Notice may be served by certified mail properly addressed. Postage must be prepaid fully to the address beneath the name for each respective party provided in subparagraphs (c) and (d) of this Paragraph. That notice shall be effective when received as indicated by post office records or, if deemed undeliverable by the post office, nonetheless shall be effective fifteen (15) days after mailing. Alternatively, notice may be given by personal delivery by any means whatsoever to the party at the address designated. That notice shall be deemed effective when delivered unless a legal holiday for state offices commences during said twenty-four (24) hour period, in which case, the effective time of the notice shall be postponed twenty-four (24) hours for each intervening day.

- (c) For the above purposes, the State Auditor's address is:

**California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814**

- (d) For the above purposes, the Contractor's address is:

**Contractor's Name  
Address  
City, State, Zip**

## **5. INDEPENDENT CONTRACTOR**

- (a) The Contractor, and the agents and employees of the Contractor, shall act, in the performance of this Agreement, in an independent capacity and not as officers, employees, or agents of the State. In accordance with that independent capacity, it is understood and agreed by the parties that the State has no right under the Agreement to control or direct the manner or means by which the Contractor undertakes to provide the services to be rendered to the State, and that the Contractor shall exercise independent judgment in all matters pertaining to the manner and means of performing under the Agreement.
- (b) Subject to subparagraph (a) of this Paragraph, the Contractor shall ensure that the Contractor's employees and agents, whenever performing services on the State's premises, observe all reasonable instructions and directions issued by the State.

## **6. STATE PERSONNEL**

The Contractor shall not be permitted to use State personnel for performing services that are the responsibility of the Contractor unless that use has been preapproved in writing by the Project Coordinator for the State Auditor identified in **Exhibit A** of this Agreement and an appropriate adjustment in price has been made. No charge will be made to the Contractor for the services of state employees while performing a coordinating or monitoring function.

## **7. OWNERSHIP OF INFORMATION AND WORK PRODUCT**

- (a) All professional and technical information developed under this Agreement, including all reports, information, related data, work sheets, findings, and conclusions produced under the Agreement ("work product") is the property of the State.
- (b) The Contractor shall keep confidential the State's work product and shall protect it from unauthorized disclosure.
- (c) The Contractor agrees to deliver reproducible copies of the State's work product at the request of the Project Coordinator for the State Auditor's Office identified in **Exhibit A**.

## **8. INDEMNIFICATION**

- (a) Each of the parties to this Agreement shall be liable solely for the negligent or wrongful acts or omissions of its representatives, agents, or employees occurring in the performance of the Agreement.
- (b) If either party becomes liable for damages caused by the party's representatives, agents, or employees, it shall pay such damages without contribution by the other party. The Contractor's obligation under the provisions of this Paragraph is not limited to, or restricted by, any requirement in this Agreement for the Contractor to maintain insurance.

- (c) To the extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State, its officers, agents, and employees from any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of the Agreement. Such defense and payment will be conditional upon the following: (1) the State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and (2) the Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided that: (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State otherwise is mandated by law, the State may participate in such action at its own expense with respect to attorney's fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will cooperate reasonably in the defense and in any related settlement negotiations.

## **9. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY**

The Contractor shall be liable for damages arising out of injury to the person, and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to the delivery, installation, acceptance, and use of any deliverables under this Agreement regardless of where the injury or damage occurs, provided that the injury or damage was caused by the fault or negligence of the Contractor.

## **10. LIMITATION OF LIABILITY**

The liability of the State under this Agreement shall not exceed the total amount payable under the Agreement, as set forth in Paragraph 1 of Exhibit B of the Agreement. In no event shall the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages.

## **11. DISPUTES**

- (b) The Contractor shall continue with the responsibilities under this Agreement during any dispute.

- (c) Any dispute arising under or relating to the performance of this Agreement, which is not disposed of by agreement, shall be decided by the State Auditor, and that decision shall be reduced to writing and mailed or otherwise furnished to the Contractor.
- (d) If the Contractor does not agree with the State Auditor's decision, either party may assert its other rights and remedies within this Agreement or within a California court of competent jurisdiction. If any action is brought to enforce or interpret any provision of the Agreement, each party shall bear its own attorney fees and costs.

## **12. GOVERNING LAW**

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California, both as to interpretation and performance, regardless of the specific location of any performance. Unless otherwise expressly agreed in writing by the parties, any action in law or equity brought to enforce any provision of the Agreement shall be filed and remain in a court of competent jurisdiction in the County of Sacramento, State of California.

## **13. PROPER SOLICITATION OF AGREEMENT**

The Contractor warrants, by executing this Agreement, that no person or selling agency has been employed or retained to solicit or secure the Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul the Agreement without liability, paying only for the value of the work actually performed, and to recover the full amount of such commission, percentage, brokerage, or contingent fee.

## **14. AGREEMENT IS COMPLETE**

This Agreement represents the complete and exclusive statement of the agreements between the State and the Contractor with respect to the subject matter of the Agreement and supersedes all prior agreements, proposals, representations, and other communications, oral or written, between the State and the Contractor regarding this subject matter. The State and the Contractor agree that there are no oral or written covenants, conditions, or agreements with respect to the subject matter of the Agreement except as set forth in the Agreement.

## **15. PREVAILING CLAUSES**

In the event of a conflict between the General Terms and Conditions set forth in this Exhibit C of this Agreement and the provisions of any other Exhibit or other Attachment to the Agreement, the provisions of the General Terms and Conditions shall govern.

## **16. CAPTIONS**

The paragraph headings appearing in this Agreement have been inserted for convenience only. They are not intended to define, explain, modify, amplify, limit, or extend the scope or intent of the paragraphs to which they pertain.

## **17. ASSIGNMENT**

The Contractor may not transfer by assignment, subcontract, or novation the performance of this Agreement, or any part thereof, except with the prior written approval of the State as to each such assignment, subcontract, or novation. Any approved assignment, subcontract, or novation shall be subject to all of the terms and conditions of the Agreement, including every Exhibit or Attachment thereto.

## **18. AMENDMENT OF AGREEMENT**

This Agreement may be amended by mutual consent of the State and the Contractor. Any alteration of or variation from the terms of the Agreement is not valid unless made in writing and signed by the parties, and approved as required. No oral understanding or agreement not incorporated into the Agreement is binding on the State or the Contractor.

## **19. SEVERABILITY**

In the event that any term, condition, or provision of this Agreement is unenforceable or held to be invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and shall not be affected, impaired, or invalidated thereby.

## **20. FORCE MAJEURE**

Except for defaults of subcontractors, the Contractor and the State are not responsible for delays or failures to perform resulting from acts beyond the control of the nonperforming party. Those acts include acts of god, strikes, lockouts, riots, acts of war, epidemics, earthquakes, other disasters, governmental statutes or regulations imposed after the fact, and ancillary functions or utilities that are provided by a person or entity not a party to this Agreement. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and the default arises out of causes beyond the control of either the Contractor or the subcontractor, without the fault or negligence of either of them, the Contractor is not liable for damages for that delay or failure, unless the supplies or services to be furnished by the subcontractor were available from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

## **21. WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in the Agreement shall be construed as cumulative; that is, in addition to every other remedy provided by the Agreement or otherwise provided by law. The failure of the State at any time to enforce any of the provisions of the Agreement or at any time to require performance by the Contractor of any of the Agreement's provisions, shall in no way be construed to be a waiver of such

provisions nor in any way to affect the validity of the Agreement or any part thereof, or the right of the State thereafter to enforce each and every provision.

## **22. TERMINATION**

- (a) The State reserves the right to terminate this Agreement, without cause, upon giving five (5) days advance written notice to the Contractor in the manner specified in the Agreement. In that event, the Contractor agrees to use all reasonable efforts to mitigate any expenses or obligations hereunder.
- (b) Notwithstanding the notice provision of subparagraph (a) of this paragraph, the State may terminate this Agreement immediately for cause. The term “for cause” means the Contractor fails to meet the terms, conditions, and/or responsibilities of the Agreement. In this instance, termination of the Agreement shall be effective as of the date indicated in the State’s notice to the Contractor that the Agreement is being terminated.
- (c) In the event of termination, without prejudice to any of its other remedies, the State shall, subject to the appropriation and availability of funds for that purpose, pay the Contractor only for the satisfactory services rendered by the Contractor and for the expenses incurred by the Contractor that were not included in the charges for the services rendered prior to the termination, provided that said expenses could not have been avoided through reasonable efforts by the Contractor.

## **23. NONDISCRIMINATION CLAUSE**

- (a) During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract’s benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- (b) Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- (c) Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations., Title 2, section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code sections 11135-11139), and the regulations or standards adopted by the awarding state agency to implement such article.
- (d) Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24

hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

- (e) Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (California Code of Regulations, Title 2, section 11105.)
- (f) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### **24. WORKERS' COMPENSATION INSURANCE**

The Contractor shall obtain, and keep in force during the term of this Agreement, workers' compensation insurance in conformity with applicable state law.

#### **25. COVENANT AGAINST GRATUITIES**

By signing this Agreement, the Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or by any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, the State may terminate the Agreement immediately, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items that the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this Paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

#### **26. RECYCLING CERTIFICATION**

The Contractor shall certify in writing under penalty of perjury under the laws of the State of California, the minimum, if not exact percentage of post-consumer material, as defined in Public Contract Code section 12200, in products, materials, goods, or supplies offered or sold to the State, regardless of whether the product meets the requirements of Public Contract Code section 12209. With respect to printer or duplication cartridges that comply with the requirements of section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Public Contract Code section 12205).

#### **27. CERTIFICATION CLAUSES**

The Contractor Certification Clauses contained in the document are incorporated by reference and made a part of this Agreement as if attached hereto.

## **28. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENT**

- (a) As required by Government Code section 14841, if for this Agreement the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under the Agreement report to the State the actual percentage of small business participation that was achieved.
- (b) As required by Government Code section 14841 and Military and Veterans Code section 999.5, subdivision (d), if for this Agreement the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then the Contractor must within 60 days of receiving final payment under the Agreement certify in a report to the State: (1) the total amount the Contractor received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

## **29. AUDIT**

The Contractor agrees that the awarding department, the California State Auditor, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Government Code section 8546.7 et seq., Public Contract Code section 10115 et seq., California Code of Regulations Title 2, section 1896).

## **30. ANTITRUST CLAIMS**

The Contractor, by signing this Agreement, certifies that the Contractor will comply with the requirements of Government Code sections 4552 through 4554 set forth below.

- (a) As provided in Government Code section 4552, the Contractor will assign to the State all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15 et seq.) or under the Cartwright Act (Business and Professions Code section 16700 et seq.) arising from the purchase of goods, materials, or services for sale to the State pursuant to this Agreement. Such assignment shall be made and become effective at the time the State tenders final payment to the Contractor.
- (b) As provided in Government Code section 4553, if the State receives, either through judgment or settlement, a monetary recovery for a cause of action

assigned under subparagraph (a) of this Paragraph, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the State as part of this Agreement price, less the expenses incurred in obtaining that portion of the recovery.

- (c) Upon demand in writing by the Contractor, the State shall, within one year from such demand, reassign the cause of action assigned under subparagraph (a) of this Paragraph if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the State has not been injured thereby, or (2) the State declines to file a court action for the cause of action.

### **31. PRIORITY HIRING CONSIDERATIONS**

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code section 10353.

### **32. CHILD SUPPORT COMPLIANCE ACT**

By signing this Agreement, the Contractor acknowledges, pursuant to Public Contract Code section 7110, each of the following:

- (a) It is the policy of the State that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and complies fully with all applicable state and federal laws relating to child and family support enforcement, including the disclosure of information and compliance with earnings assignment orders, as required by Family Code section 5200 et seq.
- (b) To the best of the Contractor's knowledge, the Contractor is complying fully with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

### **33. CONTRACTOR'S RÉSUMÉ**

The Contractor's completed résumé is required for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the Contractor, be attached to the contract for public record and is made a part of the contract as **Attachment 5**.

### **34. CONTRACT/CONTRACTOR EVALUATION**

In accordance with Public Contract Code sections 10367 and 10369, the Contractor's performance or the firm's performance will be evaluated within 60 days of completion of the contract using the Contract/Contractor Evaluation form (STD 4). The ordering agency shall complete a written evaluation, and if the Contractor did not satisfactorily perform the work specified, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services.

## **EXHIBIT D – SPECIAL TERMS AND CONDITIONS**

### **1. CONTRACTOR PERSONNEL**

- (a) The individual(s) named in **Exhibit A** of this Agreement as the person(s) authorized to perform services under the Agreement is/are essential to the Agreement. No other individual(s) employed by the Contractor may perform services under the Agreement without the prior written approval of the State. In the event that any individual named in **Exhibit A** as authorized to perform services under the Agreement ceases to be employed by the Contractor or no longer is assigned by the Contractor to perform services under the Agreement, the Contractor immediately shall provide written notice to the State and shall consult with the State regarding a replacement.
- (b) Prior to seeking approval from the State for any individual not already named in **Exhibit A** to perform services under the Agreement, the Contractor shall provide the State with the name and résumé of that individual for prompt preview and approval. If the State declines to approve the replacement of any individual named in **Exhibit A** as authorized to perform services under the Agreement, the State may terminate the Agreement immediately “for cause” as provided in **Exhibit C** of the Agreement. This provision shall not apply to support personnel such as clerical or administrative staff assigned to assist the individual(s) authorized to perform services under the Agreement.

### **2. SUBCONTRACTORS**

Nothing in this Agreement or otherwise shall create any contractual relationship between the State and any subcontractors used by the Contractor to perform services under the Agreement, and no subcontractor shall relieve the Contractor of the Contractor’s responsibilities and obligations under the Agreement. The Contractor agrees to be responsible fully to the State for all acts and omissions of its subcontractors and of the persons the Contractor employs, either directly or indirectly, to perform services under the Agreement. The Contractor’s obligation to pay its subcontractors is an obligation that is entirely independent from the State’s obligation to pay the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any money to any subcontractor.

### **3. RECORD RETENTION**

- (a) Any records obtained by the Contractor from a California state agency or other California public entity under the authority of the California State Auditor are the exclusive property of the State. Within fourteen (14) days of the Contractor completing the performance of services under this Agreement, the Contractor shall return all originals and copies of such records, including electronic copies. In addition, all records, communications, workpapers, and other documents prepared by the Contractor pursuant to the Agreement, including reports, charts, interview notes, and the Contractor’s administrative communications and records relating to the Agreement, shall be deemed the exclusive property of the State

and also shall be delivered to the State within fourteen (14) days of the Contractor completing the performance of services under the Agreement.

#### **4. ENCRYPTION AND INFORMATION PRIVACY POLICY**

The Contractor shall adhere to security measures at least as restrictive as those contained in the State's Encryption and Information Privacy Policy, which is attached to this Agreement as **Attachment 1** and hereby incorporated into the Agreement by reference, whenever handling data, documents, records, or any other such information, whether in paper or electronic form, that is provided to Contractor by the State. The Contractor shall ensure that each of its personnel having access to information provided by the State is familiar with this policy and that each of them signs and returns to the State a copy of **Attachment 1**.

#### **5. CONFIDENTIALITY/NONDISCLOSURE**

- (a) The Contractor shall protect from unauthorized disclosure all information in the Contractor's possession that has been gathered or generated in connection with the services provide pursuant to this Agreement. Such information shall include financial, statistical, proprietary, market sensitive, highly sensitive, personal, technical, and other information gathered or generated by the Contractor or the State for an audit or investigation. In providing that protection from unauthorized disclosure, the Contractor shall comply with this Paragraph, the provisions of the Confidentiality/Nondisclosure Statement attached to this Agreement as **Attachment 2**, and any other reasonable procedural requirements of the State that are provided in writing to the Contractor.
- (b) Except as required by law or legal process, the Contractor shall not disseminate or disclose publicly the content of any deliverable created in received pursuant to this Agreement and shall not disseminate or disclose publicly any materials, records, documents, or other information gathered or generated for any audit or investigation for which the Contractor provided services under this.
- (c) With the exception of comments made to personnel of the California State Auditor's Office and other agencies of the State, the Contractor shall not discuss or provide comment to any individual, including any member of the news media, regarding any matter for which the Contractor provided services under this Agreement without the prior written consent of the State.
- (d) The Contractor acknowledges and understands that it is a misdemeanor, as provided in Government Code section 8545.1, for any person or business entity that has contracted with the State, any officer or employee of a person or business entity that has contracted with the State, or any former officer or employee of a person or business entity that has contracted with the State to divulge in any manner not expressly permitted by law the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes any record, document, or other information reviewed in connection with an audit that is not used in support of a final audit report.

(e) By signing this Agreement, the Contractor certifies that the Contractor has reviewed the Confidentiality/Nondisclosure Statement attached to the Agreement as **Attachment 2** and agrees to be bound by its provisions. The Contractor also agrees to ensure that each of the Contractor's employees having access to information provided by the State is familiar with the provisions of the Confidentiality/Nondisclosure Statement and that each of them signs and submits to the State a copy of **Attachment 2** prior to performing any services under the Agreement.

## **6. DARFUR CONTRACTING ACT**

As required by the Darfur Contracting Act of 2008 (Public Contract Code section 10475 et seq.), the Contractor declares that the Contractor is not a scrutinized company as defined in Public Contract Code section 10476. In support of this declaration, the Contractor has executed the Darfur Contracting Act Certificate which is attached to this Agreement as **Attachment 3** and incorporated into the Agreement.

## **7. CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION**

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract over \$100,000 on or after January 1, 2017, the bidder or proposer certifies compliance by executing the California Civil Rights Laws Certification which is attached to this Agreement as **Attachment 4**.

## **EXHIBIT E - ENCRYPTION AND INFORMATION PRIVACY POLICY**

### **1. BACKGROUND**

The theft of portable computing devices, such as laptop computers, is a problem for the State and for private industry. Theft and other loss of portable computing equipment can lead to the compromise of confidential, sensitive, or personal data, which in turn can lead to privacy issues and costly follow-up activities.

- (a) The State continues to experience situations in which confidential, sensitive, or personal data is compromised when an unencrypted electronic device is lost, stolen, or sabotaged. Budget Letter 05-32, issued by the Department of Finance, requires the state agencies under its authority to encrypt any state data that is confidential, sensitive, and personal when it is stored on portable computing devices (including laptops and personal assistive devices) and/or portable electronic storage media (including optical discs and flash memory storage devices). Management Memo 06-12, issued by the Department of General Services, requires all state agencies under its authority to be vigilant to protect personal, sensitive, or confidential information from inappropriate or unauthorized access, use, or disclosure, regardless of media type, and regardless of whether the agency is the custodian or the owner of the information. Protecting personal, sensitive, and confidential data is the responsibility of each individual employee.
- (b) Government Code section 8545.2 grants the California State Auditor's Office a very broad right of access to the records of state agencies and other public entities it is authorized to audit or investigate. Additionally, the State Auditor's Office may receive information from the private sector based on an agreement that it will keep the information confidential. Since the State Auditor's Office has "stand in their shoes" authority over auditee information, and at times receives sensitive information from the private sector, the State Auditor's Office must be vigilant in protecting personal, sensitive, and confidential information from inappropriate or unauthorized access, use, or disclosure, regardless of media type. In addition, the State Auditor's Office is the owner of sensitive information, such as personnel records, and also must be vigilant in protecting those records.
- (c) This policy is not intended to limit the right of the State Auditor's Office to access the records of public entities. Rather, it is intended to establish protocols to minimize the risk that those records are disclosed inadvertently.
- (d) Additionally, because no employee is expected to know every state and federal privacy law, this policy requires the employees of the State Auditor's Office to exercise sound judgment in assessing the sensitive nature of information by asking themselves whether, if the information related to them, they would want it maintained in a secure manner. Where an employee is in doubt about the sensitive nature of information, the employee should err on the side of caution.

## 2. POLICY

- (a) Whether the State Auditor's Office is the custodian or the owner of the confidential information, all employees must ensure the security and integrity of that information. Individuals of non-governmental entities with whom the State Auditor's Office has contracted also are included under this mandate (Civil Code section 1798.19). This policy pertains to all information assets, including electronic assets and paper assets. The State Auditor's Office has two positions that have primary responsibility for monitoring and enforcing these policies: the Information Security Officer (manager, Information Technology Unit), and the Information Privacy Officer (legal counsel).
- (b) All employees of the State Auditor's Office are responsible for encrypting, or taking equally effective measures to protect, the security of all personal, sensitive, and confidential information that is stored on any portable electronic storage media (including optical discs and flash memory storage devices) and on portable computing devices (including laptop, handheld, and tablet computers).
- (c) This policy applies to all state data, including media owned by employees, vendors, contractors, or researchers, regardless of format or medium. Where state-owned confidential, sensitive, and/or personal information exists, it must not be allowed to be stored on any portable equipment or media that is not protected.
- (d) Personal, sensitive, or confidential information stored on a shared drive on a local area network is not subject to this policy because a drive of this kind is not considered portable.

## 3. RULES OF CONDUCT

The following is an overview of the rules of conduct the State Auditor's Office follows to protect personal, sensitive, and confidential data.

### **Responsibilities of all staff**

- (a) All electronic transmittals of personal, sensitive, or confidential information between staff of the State Auditor's Office and auditees or contractors, including editors, must be encrypted.
- (b) Staff must limit the gathering of data to only what is relevant and necessary, redact extraneous information whenever possible, and where appropriate, label workpapers as nonpublic.
- (c) Because we often are unaware of whether auditee files contain personal, sensitive, or confidential information at the time we receive them, before personally obtaining electronic data from an auditee, staff should work with their and the auditee's information technology personnel to ensure that the data is encrypted before staff accepts custody. The State Auditor's Office has external hard drives and flash drives available for its use.
- (d) Staff may work only with secure servers while away from the office.

- (e) Staff must ensure that all hard drives and other storage devices and external media, including flash drives, are encrypted.
- (f) Staff must follow the protocols of the State Auditor's Office for password protection, which requires at least eight characters, including numbers and symbols, and changing passwords at least every forty-two (42) days. Staff should employ strong passwords. A strong password conforms to the following parameters:
  - 1. It is never shared with anyone else.
  - 2. It is at least eight (8) characters in length.
  - 3. It uses at least one (1) character from each of the following character types:
    - a. Lower case letter (e.g. a).
    - b. Upper case letter (e.g. B).
    - c. Number (e.g. 3).
    - d. Punctuation mark or symbol (e.g. \$).
  - 4. It is easy to remember, but not easily guessable or related to staff (such as a social security number, address, or telephone number).
- (g) Staff assigned to audits that will involve gathering personal and confidential information, as defined below, must meet with the Information Security Officer (ISO) and the Information Privacy Officer (IPO) or the Contractor's equivalents prior to gathering the data. Investigations and ITAS staff of the State Auditor's Office must meet annually with the ISO and IPO.
- (h) An audit team's need to collect personal, confidential, or sensitive information, as defined below, should be discussed at the audit's kick-off meeting and thereafter if an audit requires the late collection of information of that nature.
- (i) All audit staff with access to personal and confidential information must certify in writing, prior to accessing such data, that they are aware of the nature of the data, and have reviewed, understand, and agree to adhere to the Rules of Conduct as specified in this section of the policy. This will occur at the meeting with the ISO and IPO or the Contractor's equivalents.
- (j) Each audit team leader is responsible for developing and updating a written list of staff (including obtaining the signatures of those staff), who are authorized to access any personal data on an audit.
- (k) Laptops left in hibernation or sleep mode, or not turned off at all, are the most vulnerable to attack. Staff must shut down any computer equipment containing personal, sensitive, or confidential data completely if they will be away from their work area overnight or for several hours during the business day. This requires that employees who leave the office without turning off their computers return to the office to shut down their computers before ending the work day. While in the office, when employees leave their desks for short periods, they must comply with the state policy of locking their computers by simultaneously pressing the Ctrl-Alt-Delete keys. While the office typically is well-attended during the day, staff should be mindful that their coworkers are not responsible for guarding staff

computers. Therefore, staff should exercise sound judgment when leaving computer terminals and work stations, particularly when persons who are not employees of the State Auditor's Office are present or may have access to the computers. Additionally, when working out of the office, employees should shut down computers completely while away from their desks for thirty (30) minutes or more.

- (l) Staff must use secure methods to transport data (i.e. carry-on luggage when traveling, or other secure transmittal methods).
- (m) Staff only may use the computer equipment of the State Auditor's Office or the Contractor to receive, store, and transmit electronic information.
- (n) Staff must preserve the "chain of custody" of personal and confidential data, whether it is in an electronic or hard-copy format. Chain of custody means staff constantly is aware of, has carefully documented the location of, and has carefully documented the names of the persons responsible for the data from the time it leaves the custody of an auditee until we have completed our work with the data. Depending on the type of information involved, preserving a chain of custody may require that witnesses be present when information is exchanged or accounted for. It also requires that staff carry-on, not check, the equipment and information of the State Auditor's Office when travelling.
- (o) Staff must transfer records gathered from state agencies and stored on laptops to the secure network drives of the State Auditor's Office or the Contractor as soon as practicable.
- (p) When working out of the office, staff must secure all workpapers and other personal, sensitive, or confidential materials, regardless of format or media, when away from their desks. When working in the office, every employee must secure all materials containing personal and confidential data before leaving the office at night and prior to leaving the office during business hours when it is possible that the employee may not return to work that day. Additionally, when management has determined that only certain employees will have access to information because of its sensitive nature, staff must ensure that such information is secured whenever it is left unattended by those authorized to access it, even during business hours and while working in the office. Staff should use locked file cabinets, locking foot lockers, and, where available, manual door locks for purposes of securing workpapers and materials. Audit team leaders should make use of keys available for team rooms, obtaining them from the receptionist and returning them after they finish using the rooms.
- (q) Any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of personal information maintained by the State Auditor's Office or the Contractor on behalf of, or in the course of doing business with, the State Auditor's Office (hereinafter "breach of security" or "breach") by the State Auditor's Office, the Contractor, or an auditee must be reported immediately to the ISO and IPO. Additionally, upon identifying a potential violation of this policy, staff must notify the ISO and IPO promptly about the

potential security risk. When directed to do so, staff, with assistance from legal counsel, must prepare a management letter that discloses the nature of the security risk that the State Auditor's Office has identified.

- (r) Staff, assisted by the IT Unit, must shred all backup and hard-copy personal, sensitive, and confidential materials when they no longer are needed.
- (s) Staff, assisted by the IT Unit, must ensure that personal, sensitive, or confidential data on discs, flash drives, and other external media are overwritten before the discs are discarded. As documentation of this, staff is required to sign and complete the Information Technology Addendum to Job File Checklist (AUD-310) at the end of an audit assignment.
- (t) Staff, assisted by the IT Unit, is responsible for ensuring that the electronic information security systems of the State Auditor's Office limit access to personal, sensitive, or confidential information to those who need access and to those who have a right of access, as appropriate.

#### **Responsibilities of the IT Unit**

- (a) The IT Unit ensures that all computers and hard drives are overwritten when they are discarded.
- (b) The IT staff certifies, in writing, that it is responsible for: (1) implementing the necessary technical means to preserve the security, privacy, and integrity of the information assets of the State Auditor's Office and managing the risks associated with those assets; and (2) acting as a custodian of information, as described by the Department of General Services in the State Administrative Manual (SAM) at section 5315.1, for the agencies under its authority.

#### **Responsibilities of other staff of the State Auditor's Office**

- (a) A deputy state auditor must confirm that a departing employee has certified, in writing, that all confidential, personal, and sensitive data handled by the departing employee has been destroyed, transferred to a supervisor, or otherwise secured properly before the employee proceeds with final checkout.
- (b) Laptops and other electronic devices assigned to staff of the State Auditor's Office, as well as work areas, are subject to periodic inspection by the ISO to ensure compliance with these protocols. As part of the ongoing audit and evaluation process of the State Auditor's Office to ensure adherence to the information privacy program, the ISO or the ISO's delegates perform random inspections of all workspaces and devices.
- (c) The ISO and IPO will investigate all information security breaches and handle any notifications that may be required, as indicated in the information privacy guidelines of the State Auditor's Office.
- (d) The ISO and the IPO will conduct mandatory annual privacy and security training classes for all staff of the State Auditor's Office. The State Auditor, or the State Auditor's designee, will certify annually that 100 percent of her staff has attended the training.

#### 4. DEFINITIONS

For the purposes of this policy, **Personal information** is information that identifies or describes an individual, including the name, physical description, home address, home telephone number, education, financial matters, and medical or employment history of the individual, as well as statements made by or attributed to the individual (Civil Code section 1798.3). Personal information is particularly sensitive and must be protected from inappropriate access, use, or disclosure and made accessible to its subjects upon request. Additional examples of personal information are contained in the statutes listed below, which are not intended to constitute an exhaustive list:

- (a) Notice-triggering personal information – specific items of personal information, regardless of media or format (first name or first initial and last name in combination with social security number, driver's license/California identification card number, financial account, credit card or debit card number in combination with any security code, access code or password that would permit access to an individual's financial account, medical information, health insurance information, or information or data collected through the use or operation of an automated license plate recognition system) that may trigger a requirement to notify individuals if an unauthorized person acquires it (Civil Code section 1798.29);
- (b) Protected Health Information – individually identifiable information regarding a patient's medical history, mental or physical condition, or treatment created, received, or maintained by such organizations as health care payers, pharmaceutical companies, health care providers, health plans, and contractors to these entities, in electronic or physical form. State law requires special precautions to protect such data from unauthorized use, access, or disclosure (Confidentiality of Medical Information Act, Civil Code section 56 et seq. and the Patients' Access to Health Records Act, Health and Safety Code sections 123100-123149.5); and
- (c) Electronic Health Information – individually identifiable health or health billing information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. Federal regulations require state entities that are health plans, health care clearinghouses, or health care providers that conduct electronic transactions ensure the privacy and security of electronic protected health information from unauthorized use, access, or disclosure (See Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. parts 160 and 164). HIPAA imposes stiff penalties and requires notice to consumers if protected data is accessed by unauthorized persons.

**Sensitive information** is information maintained by state agencies that requires special precautions to protect it from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive information may be either public or confidential. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for sensitive information is that of integrity. Typically, sensitive information includes records of agency financial transactions and regulatory actions.

**Confidential information** is information maintained by state agencies that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws. For purposes of this policy only, materials generated by the State Auditor's Office that do not contain any person's personal or confidential data are not confidential.

**Additional Resources.** The State Administrative Manual, Chapter 5300, includes statewide policies, procedures, regulations, and information about security. It can be found at the [Department of General Services](#) and the [Department of Technology](#).

## 5. ACKNOWLEDGMENT

The Contractor acknowledges receipt of and shall comply with the California State Auditor's policy on data encryption and information privacy. Each of the Contractor's personnel having access to information provided by the State shall sign and return a copy of the certification below. If you have any questions or concerns regarding this policy, please contact **Jeremy Evans**, ISO, or **Heather Kendrick**, IPO.

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**Company/Firm Name**

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**Print Name**

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**Signature**

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**Date**

## **EXHIBIT F - CONFIDENTIALITY/NONDISCLOSURE AGREEMENT**

### **1. CONFIDENTIALITY/NONDISCLOSURE STATEMENT**

The undersigned acknowledges and agrees that the contents of any personal, technical, and other data and information relating to the State's operations that are made available to the Contractor in carrying out this Agreement, or that become available to the Contractor in carrying out this Agreement, are confidential and shall be protected by the Contractor from unauthorized use or disclosure, as described in this Agreement. In providing that protection, Contractor shall comply with this Agreement and any other procedural requirements of the State that are provided in writing to the Contractor. In that regard, the undersigned acknowledges and agrees to all of the following:

- (a) The work products and records, documents, or information used in support of the work products that are made available to the Contractor pursuant to this Agreement, including, but not limited to, all personal, technical, and other data and information used in support of or contained in those work products, are confidential and shall be protected by the Contractor from unauthorized use or disclosure. In providing that protection, Contractor shall comply with this subdivision and any other procedural requirements of the California State Auditor that are provided in writing to the Contractor.
- (b) Contractor shall not disclose data or disseminate the contents of any preliminary or final work product or records, documents, or information used in support of the work product without the written permission of the California State Auditor.
- (c) With the exception of comments made about the work product to the State Auditor or her staff, Contractor shall not make comments to any individual, including, but not limited to, any member of the media, regarding the work product, nor shall Contractor comment on the State Auditor's actions regarding the work product, without the prior written consent of the State Auditor.
- (d) Contractor acknowledges that it is a misdemeanor for the California State Auditor or any employee or former employee of the California State Auditor to divulge in any manner not permitted by law, the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes, but is not limited to, records, documents, or information reviewed in connection with the work product that are not used in support of the final work product. This prohibition also applies to any person or business entity and to the employees and former employees of this person or business entity that has assisted the State Auditor in the course of a work product or that has been furnished a draft copy of a work product for comment and review (Government Code section 8545.1).

**2. CONFIDENTIALITY/NONDISCLOSURE ACKNOWLEDGMENT**

(To be completed by each of Contractor's personnel)

The undersigned Contractor acknowledges that he/she has been provided with a copy of the Confidentiality/Nondisclosure Statement between State and Contractor (Agreement) and understands that any records, documents, and information, or any draft or final materials that the undersigned reviews, receives, or produces in connection with providing training services to the California State Auditor, are subject to the terms of the Agreement.

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**Company/Firm Name**

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**Print Name**

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**Signature**

**Date**

**EXHIBIT G - DARFUR CONTRACTING ACT CERTIFICATION**

Reference **Attachment E** in Section V Required Attachments for the Darfur Contracting Act Certification.

**EXHIBIT H – TARGET AREA CONTRACT PREFERENCE ACT**

Reference **Attachment F** in Section V Required Attachments for the Target Area Contract Preference Act.

**EXHIBIT I - CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION**

Reference **Attachment G** in Section V Required Attachments for the California Civil Rights Laws Certification.

## **EXHIBIT J - CONTRACTOR CERTIFICATION CLAUSES**

Reference **Attachment I** in Section V Required Attachments for the Contractor Certification Clauses.

## **EXHIBIT K – PAYEE DATA RECORD**

A fillable form is available on the Department of General Services website at [Payee Data Record STD 204](#).