# **Request for Quote #32806**

**Child Welfare Services – California Automated Response and Engagement System**

**Cloud Architect Services**

The California Health and Human Services Agency (CHHSA), Office of Systems Integration (hereinafter referred to as OSI or State) procures, manages, and delivers technology systems that support the delivery of services to Californians provided by the CHHSA. The OSI is inviting you to review and respond to this Child Welfare Services – California Automated Response and Engagement System, Cloud Architect Request for Quote – Information Technology Services (RFQ-ITS).

The OSI has updated its RFQ-ITS template. Vendors are encouraged to review all elements of the new template.

The OSI has purchasing authority for information technology (IT) goods and services (California Public Contract Code (PCC) section 12100) and has selected to use the Small Business (SB) Option to procure consulting services (California Government Code section 14838.5). To be considered for this RFQ-ITS, the vendor responding to this RFQ-ITS (Vendor) must be a certified SB. All Vendors must adhere to the Key Action Dates and Times provided in the RFQ-ITS. The State may modify any part of the RFQ-ITS by issuance of one (1) or more addenda.

Responses to this RFQ-ITS must comply with the instructions found herein. Failure to comply with any of the instructions may cause the response to be rejected.

An agreement resulting from this RFQ-ITS (Agreement) shall not exceed $249,999.99.

**CONTACT INFORMATION**

Office of Systems Integration

Acquisition and Contracting Service Division

Procurement Official: Albert De León

Phone: (916) 263-4285, E-mail address: [solicitations@osi.ca.gov](mailto:solicitations@osi.ca.gov)

**RFQ-ITS SUBMITTAL ADDRESS:**

Office of Systems Integration

2535 Capitol Oaks Drive, Suite 120, Sacramento, CA 95833

**KEY ACTION DATES & TIMES**

|  |  |
| --- | --- |
| **RFQ-ITS Release Date:** | March 16, 2018 |
| **Vendor Questions Due Date & Time:** | March 20, 2018 **by 5:00 p.m.** |
| **State Responses to Vendor Questions:** | March 21, 2018 |
| **RFQ-ITS Response Must be Received by Due Date & Time:** | March 26, 2018 **by 3:00 p.m.** |
| **Interview Dates (if held)\*:** | TBD |
| **Anticipated Term Dates\*:** | April 2, 2018 **through** September 28, 2018 |

\*The Interview and Anticipated Term Dates are approximate and may be adjusted as conditions indicate without an addendum to this RFQ-ITS.

**THIS RFQ-ITS DOCUMENT COMPRISES TWO (2) SECTIONS AS FOLLOWS:**

Section I – Request for Quote – Overview and Submittal Instructions

Section II – Request for Quote – Statement of Work

**Child Welfare Services – California Automated Response and Engagement System Cloud Architect Services**

**SECTION I – REQUEST FOR QUOTE – OVERVIEW AND SUBMITTAL INSTRUCTIONS**

1. **PURPOSE**

The purpose of this Request for Quote - Information Technology Services (RFQ-ITS) is to obtain highly complex and specialized expertise for cloud architecture. The Contractor shall provide subject matter expertise services to the Child Welfare Services – California Automated Response and Engagement System (CWS-CARES) Project.

1. **PROJECT BACKGROUND**

Child Welfare Services (CWS) is the primary prevention and intervention resource for child abuse, neglect, and exploitation in California. Through a coordinated system of programs, federal, state and local agencies develop and implement new services that focus on preventing child abuse and neglect by strengthening families, protecting children from further maltreatment, reuniting children safely with their families, or finding permanent families for children who cannot safely return home.

State, county, and local agencies throughout California collaborate through Child Welfare Digital Services (CWDS) to support our shared stakeholders through technology that aids child welfare professionals in the vital assistance, oversight, and case management of this vulnerable population. The CWDS maintains and operates the existing Child Welfare Services/Case Management System (CWS/CMS), including the implementation of operational changes to that system. At the same time, CWDS is developing the CWS-CARES, which will implement a new underlying technology platform and set of Digital Services. The CWS-CARES will be an innovative, statewide 21st century information technology application that assists professionals in partnering with the shared goal of assuring the safety, permanency, and well-being of children.

CWS-CARES Vision

The CWS-CARES will replace Legacy System business functionality one Digital Service at a time, with modernization including replacing and extending existing functionality. The CWS-CARES will use open standards and commodity open source components and tools when they are available. All new source code will be made open and reusable and published with an appropriate license chosen by the state. Where open standards or open-source components are unavailable, the state will consider proprietary standards against the tradeoff of a long-term open, maintainable system that the state can direct and control. The state will own the products produced and intends to provide an open source license chosen by the state to the products created or modified as part of this RFQ-ITS.

1. **GENERAL INFORMATION**
   1. The specific tasks and deliverables associated with this RFQ-ITS are included in Section II, the Statement of Work (SOW). The SOW and Vendor’s response to this RFQ-ITS (Response) will be made a part of the Agreement.
   2. Vendors must submit via email any questions regarding this RFQ-ITS by the date specified in the Key Action Dates and Times, to the Procurement Official listed on the RFQ-ITS cover page. Include the RFQ-ITS # in the subject line. Vendors shall provide specific information to enable the State to identify and respond to the questions. At its discretion, the State may contact a Vendor to seek clarification of any questions received. Vendors that fail to report a known or suspected problem with the RFQ-ITS or fail to seek clarification and/or correction of the RFQ-ITS submit a Response at their own risk.
   3. All costs for developing Responses are entirely the responsibility of the Vendor and shall not be chargeable to the State**.**
   4. All documents submitted in response to this RFQ-ITS will become the property of the State of California and are subject to the California Public Records Act, California Government Code section 6250 et seq., the California Evidence Code and other applicable state and federal laws, despite any markings indicating the documents are proprietary or confidential.
   5. Issuance of this RFQ-ITS in no way constitutes a commitment by the State to award an Agreement. The State reserves the right to reject any or all Responses received.
   6. Irrevocable Offer: A Vendor’s final offer in response to this RFQ-ITS shall constitute a firm offer, which shall remain irrevocable for not less than ninety (90) days following the RFQ-ITS Response Due Date specified in the Key Action Dates and Times. The expiration date of the Vendor’s firm offer may be extended by the Vendor via written notice to the State. The State’s execution of a contract under this RFQ-ITS shall not be considered a rejection of any unsuccessful Vendor’s firm offer, which shall remain irrevocable for the period described above. The State reserves the right, upon termination of any contract and without initiating a new RFQ-ITS process, to accept any other Vendor’s firm offer and form a contract with that other Vendor.
2. **RFQ-ITS BEST VALUE DETERMINATION**

Award of an Agreement will be based on best value. The State will consider the following in determining best value for award:

| **Assessment Criteria** | | |
| --- | --- | --- |
| **Item** | | **Rating** |
| Staff Experience | | Pass/Fail |
| Understanding and Approach | | 400 Points |
| Cost Evaluation (Exhibit B) | | 300 Points |
| Interview Evaluation (optional) | | 300 Points |
|  | **Total possible points if interview is conducted** | **1,000 Points** |
|  | **Total possible points if interview is not conducted** | **700 Points** |

1. **RFQ-ITS SUBMITTAL INSTRUCTIONS**

Vendors may submit their Response electronically via email or in hard copy. The electronic offer must be sent to [*solicitations@osi.ca.gov*](mailto:solicitations@osi.ca.gov) prior to the date and time identified in the Key Action Dates section of this RFQ-ITS. The subject line of the Response should include the RFQ-ITS number and title. It is recommended that Vendors contact the Procurement Official to verify that the Response was received.

For hard copy submittals, Vendors are to submit one (1) copy of the Response to the Procurement Official.

The Response documents shall be submitted as set forth in the Vendor Outline and Checklist.

**VENDOR OUTLINE AND CHECKLIST**

Complete this checklist to help confirm the items in your Response.

**Exhibit Exhibit Names/Description**

Electronic Media Include an Electronic Copy of the complete Response

Exhibit A Information and Offer Certification Sheet

Exhibit BCost Worksheet

Exhibit C - 1 Staff Resume Table(s)

Exhibit C - 2 Understanding and Approach

Exhibit D [Bidder Declaration, GSPD-05-105](http://www.documents.dgs.ca.gov/pd/poliproc/MASTEr-BidDeclar08-09.pdf)

Note – Vendors shall not propose to subcontract 100% of the work to be performed, as specified in the Statement of Work

Exhibit E Commercially Useful Function (CUF) Documentation

Exhibit FSB Certification

Exhibit G Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion Certification

Exhibit HIran Contracting Act Certification

Exhibit I [Payee Data Record, STD. 204](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf)

Exhibit J[Civil Rights Form](http://www.dgs.ca.gov/Portals/32/Users/141/25/3725/CALIFORNIA%20CIVIL%20RIGHTS%20LAWS%20ATTACHMENT.pdf)

**EXHIBIT A**

**INFORMATION AND OFFER CERTIFICATION SHEET**

This Information and Offer Certification Sheet must be signed and returned.

**VENDOR’S FIRM INFORMATION**

*An unsigned Information and Offer Certification Sheet shall be cause for rejection of the Response.*

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. Vendor’s Firm Name | | | 2a. Phone Number | | | 2b. Fax Number *(if any)* | | |
|  | | | (   ) | | | (   ) | | |
| 3. Physical Address | | | | | | | | |
|  | | | | | | | | |
| 4. Person Authorized to Bind Firm *(Print)* | | | | | 5. Email Address | | | |
|  | | | | |  | | | |
| 6. **Signature of Certification**  **(Person Named above)** | | | | | 7. Date | | | |
| *(Signature of Person Named Above)* | | | | |  | | | |
| 8. Is your firm certified with the DGS, Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) as: | | | | | | | | |
| a. SB  Yes  No  If yes, enter certification number: | | | b. DVBE  Yes  No  If yes, enter certification number: | | | | | |
|  |  |  |  |  | | | |  |
| **NOTE**: A copy of your certification should be included if the above item(s) are checked **“Yes”**. | | | | | | | | |
| Date application was submitted to OSDS, if an application is pending: | | | | | | |  | |

The signature affixed and dated hereon certifies compliance with all the requirements of this RFQ-ITS. The signature provided authorizes the verification of the certifications.

By signing this form, Exhibit A, I (we) certify the following statements:

1. “I (we) hereby certify the information contained in this Response is accurate and all required Exhibits and information submitted as a part of this Response are certified to be true and binding upon the Vendor.”
2. “I (we) hereby certify this is a firm and irrevocable offer for ninety (90) days following the RFQ-ITS Response Due Date, as specified in the Key Action Dates and Times, and agree to execute an agreement, if awarded.”
3. “I (we) hereby certify our ability and willingness to perform the services as described in the RFQ-ITS.”
4. "I (we) hereby certify the availability of staff and other required resources for performing all services and providing all materials as described in this RFQ-ITS.”

**EXHIBIT B**

**Cost Worksheet**

Complete the Cost Worksheet by filling in the yellow-fields for the term of the Agreement.

Hourly rates will not be adjusted and are required to remain at the same rate throughout the Agreement resulting from this RFQ-ITS. The State is seeking one (1) resource to provide the services described in this RFQ-ITS.

The total cost shall not exceed $249,999.99.

There will be no reimbursement for travel as part of this Agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| **Vendor Name:** |  | | |
| **Proposed Staff’s Name** | | **Hourly Rate** (remains the same for entire Agreement term) | | |
|  | | $ |  | |

**EXHIBIT C-1**

**Staff Resume** **Table**

Instructions: Complete a staff resume table for each proposed staff. All fields on the form must be completed, providing sufficient information to allow the State to validate that the proposed staff meet the Mandatory Qualifications. The State reserves the right to contact the References listed to validate the staff experience. Each Project Description, Relevant Experience Description and Reference Contact shall be tied together with a number, as it appears in the previous Example (*add “Project #2”, “Reference #2”, etc. as necessary*).

|  |  |
| --- | --- |
| **Vendor Name:** Type Firm Name Here | **Proposed Staff's Name:** Type Staff Name Here |
| **Mandatory Qualification # 1** | |
| At least five (5) years of full time equivalent (FTE) experience designing available, cost-efficient, fault-tolerant, and scalable distributed systems on cloud infrastructure. | |
| **Project #1** | **Reference #1** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period (Month, Day, Year – Month, Day, Year):* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| **Project #2** | **Reference #2** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period:* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| ***Total Duration****:* | |
| Total number of hours | |

|  |  |
| --- | --- |
| **Vendor Name:** Type Firm Name Here | **Proposed Staff's Name:** Type Staff Name Here |
| **Mandatory Qualification # 2** | |
| At least three (3) years of FTE experience using computer networking, storage, and database services. | |
| **Project #1** | **Reference #1** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period (Month, Day, Year – Month, Day, Year):* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| **Project #2** | **Reference #2** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period:* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| ***Total Duration****:* | |
| Total number of hours | |

|  |  |
| --- | --- |
| **Vendor Name:** Type Firm Name Here | **Proposed Staff's Name:** Type Staff Name Here |
| **Mandatory Qualification # 3** | |
| At least three (3) years of FTE experience with cloud computing deployment and management services. | |
| **Project #1** | **Reference #1** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period (Month, Day, Year – Month, Day, Year):* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| **Project #2** | **Reference #2** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period:* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| ***Total Duration****:* | |
| Total number of hours | |

|  |  |
| --- | --- |
| **Vendor Name:** Type Firm Name Here | **Proposed Staff's Name:** Type Staff Name Here |
| **Mandatory Qualification # 4** | |
| Must have a computer science or technology-related baccalaureate degree from an accredited college or university, or seven (7) years of experience in computer science or technology-related field of work. | |
| **Project #1** | **Reference #1** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period (Month, Day, Year – Month, Day, Year):* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| **Project #2** | **Reference #2** |
| *Company Name:* | *Contact Name:* |
| *Project Name:* | *Company Name:* |
| *Time Period:* | *Phone Number:* |
| *Percentage of Time:* | *Email:* |
| *Number of System Users:* |  |
| **Experience** | |
| *Staff’s Role:* | |
| *Description of relevant experience:* | |
| ***Total Duration****:* | |
| Total number of hours | |

**EXHIBIT C-2**

**Understanding and Approach**

Vendor Name:

Provide a narrative, not to exceed twenty (20 pages) in length, describing your understanding of and approach to the following questions/topics. In addition to the twenty (20) page restriction, single-sided, the font size shall not be smaller than size eleven (11).

|  |  |
| --- | --- |
| Item | Understanding and Approach Question/Topic(s) |
| 1 | The Vendor shall describe its understanding of the scope of work and its approach to complete the scope of work, including challenges and how the Vendor’s approach overcomes these challenges. |
| 2 | The Vendor shall describe its practice of cloud architecture to combine software and systems engineering to build and run large-scale, massively distributed, fault-tolerant systems. |

**EXHIBIT E**

**Commercially Useful Function Documentation**

All certified small business, micro business, or DVBE contractors, subcontractors or suppliers shall meet the CUF requirements under GC section 14837(d) (4)(A) (i-v) (for SB) and Military and Veterans Code section 999(b)(5)(B) (i) (I-V) (for DVBE) as stated below.

|  |  |
| --- | --- |
| **VENDOR NAME:** |  |

|  |  |
| --- | --- |
| **SUBCONTRACTOR NAME:** |  |

**Mark all that apply: DVBE  Small Business  Micro Business**

**SECTION 1:**

A person or entity is deemed to perform CUF, if a person or entity **does** all of the following. (Please answer the following questions.)

|  |  |  |
| --- | --- | --- |
| I. | Is responsible for the execution of a distinct element of the work of the Agreement. | YesNo |
| II. | Carries out the obligation by actually performing, managing, or supervising the work involved. | YesNo |
| III. | Performs work that is normal for its business services and functions. | YesNo |
| IV. | Is responsible, with respect to products, inventories, materials, and supplies required for the Agreement, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment. | YesNo |
| V. | Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. | YesNo |

NOTE: A response of “No” to any of the questions above may result in your Response to be deemed **non-responsive** and disqualified.

**SECTION 2:**

The vendor shall provide a written statement detailing the role, services and/or goods the subcontractor(s) will provide to meet the CUF requirement.

|  |  |  |
| --- | --- | --- |
| VI. | Describe the specific role(s) of the subcontractor for this project (e.g. data conversion, training, etc.): |  |
| VII. | Describe the goods/services to be provided for this project (include a description of the bidder versus the subcontractor responsibilities for each role): |  |

**SIGNATURE OF VENDOR (PRIME): DATE:**

**EXHIBIT G**

**FEDERAL DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION CERTIFICATION**

The agency must have this form completed by the Contractor when federal funds are used.

**Federal Requirement**

Contractors are required to provide the following certification to the agency before award of a purchase order using federal funds. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211)

**Present Status**

The prospective recipient of federal assistance funds certifies, by submission of this signed certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

**Attach Explanation**

Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this certification.

**Instructions for Certification**

BEFORE COMPLETING CERTIFICATION, READ THE FOLLOWING INSTRUCTIONS THAT ARE AN INTEGRAL PART OF THE CERTIFICATION.

1. By signing and submitting this certification, the prospective recipient of federal assistance funds is providing the certification as set out below.

2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.

3. The prospective recipient of federal assistance funds shall provide immediate written notice to the person to whom this certification is submitted if at any time the prospective recipient of federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily exclude,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.

5. The prospective recipient of federal assistance funds agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not, knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.

6. The prospective recipient of federal assistance funds further agrees by submitting this certification that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

Vendor/Company Name

Name and Title of Authorized Representative

Signature

**EXHIBIT H**

**IRAN CONTRACTING ACT CERTIFICATION**

**(PCC sections 2202-2208)**

Prior to bidding on, submitting a proposal, or executing a contract or renewal for a State of California contract for goods or services of one million dollars ($1,000,000) or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the DGS pursuant to PCC section 2203(b) and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS, or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to PCC section 2203(c) or (d).

To comply with this requirement, the vendor must insert its financial institution name and Federal Identification Number (if available) and complete **one** of the options below. Please note: California law established penalties for providing false certifications, including civil penalties equal to the greater of two hundred and fifty thousand dollars ($250,000) or twice the amount of the contract for which the false certification was made, contract termination, and three-year ineligibility to bid on contracts. (PCC section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by the DGS.

|  |  |  |
| --- | --- | --- |
| *Vendor Name/Financial Institution (Printed)* | | *Federal ID Number (or n/a)* |
| *By (Authorized Signature)* | | |
| *Printed Name and Title of Person Signing* | | |
| *Date Executed* | *Executed in* | |

**OPTION #2 – EXEMPTION**

Pursuant to PCC sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If a vendor has obtained an exemption from the certification requirement under the Iran Contracting Act, fill out the information below, and attach documentation demonstrating the exemption approval.

|  |  |
| --- | --- |
| *Vendor Name/Financial Institution (Printed)* | *Federal ID Number (or n/a)* |
| *By (Authorized Signature)* | |
| *Printed Name and Title of Person Signing* | *Date Executed* |

**SECTION II – REQUEST FOR QUOTE - EXHIBIT A STATEMENT OF WORK**

**Child Welfare Services – California Automated Response and Engagement System**

**Cloud Architect Services**

1. **PURPOSE – GENERAL**

This Statement of Work (SOW) reflects the services to be provided by , hereinafter referred to as the “Contractor,” for the California Health and Human Services Agency, Office of Systems Integration, hereinafter referred to as the “OSI” or the “State.”

The purpose of this Request for Quote – Information Technology Services (RFQ-ITS) is to obtain highly complex and specialized expertise for cloud architecture. The Contractor shall provide subject matter expertise services to the Child Welfare Services – California Automated Response and Engagement System (CWS-CARES) Project.

1. **term**
2. The term of this Agreement shall commence on April 2, 2018 (referred herein as the “Effective Date”) and continue through September 28, 2018.
3. If the Contractor has not completed performance of the services set forth in this Agreement within the term and unspent funds remain in the Agreement, the State reserves the option to extend the term of this Agreement, as necessary, to receive complete performance by the Contractor for up to one (1) year at the originally agreed-upon hourly rates and at no addition to the total Agreement cost.
4. The Contractor shall not be authorized to deliver goods or commence performance of services described in this Agreement prior to the Effective Date. Any delivery of goods or performance of services by the Contractor that is commenced prior to the Effective Date shall be considered gratuitous on the part of the Contractor.
5. **WORK LOCATION**

The Contractor is required to perform all services under this Agreement onsite at the CWS-CARES Project office or, with State’s prior written approval, remotely at another location. The CWS-CARES Project is located at 2870 Gateway Oaks Drive, Sacramento, CA 95833. The State will not reimburse Contractor for any travel as part of this Agreement.

1. **COST**

The total cost of this Agreement is $ (to be entered upon award). Cost details are located in the Cost Worksheet, Exhibit B.

1. **Scope of Services**
2. **Detailed Tasks**

| **Task No.** | **Task Description** |
| --- | --- |
| **Task 1 – Cloud Architecture** | |
| **1.1** | The Contractor shall identify methods and tools to maintain security and protect data in accordance with State and federal laws and policies, and industry best standards. |
| **1.2** | The Contractor shall prepare and deliver a cloud architecture roadmap and plan, which shall include, but is not limited to:   1. Architectural designs; 2. Reference models; 3. Business metrics; and 4. Standards and methodologies.   The cloud architecture roadmap and plan are due in accordance with the Project Schedule. |
| **1.3** | The Contractor shall develop a scalable cloud infrastructure utilizing State-provided Amazon Web Services (AWS). |
| **1.4** | The Contractor shall prepare and deliver a business continuity plan to achieve high availability for CWDS’ cloud architecture. The business continuity plan is due in accordance with the Project Schedule. |
| **1.5** | The Contractor shall create event-driven scaling for the CWDS cloud infrastructure. |
| **1.6** | The Contractor shall automate the deployment of cloud services. |
| **1.7** | The Contractor shall design a cloud architecture to decouple infrastructure and reduce interdependencies. |
| **1.8** | The Contractor shall optimize data storage for static content for the CWDS cloud infrastructure. |
| **1.9** | The Contractor shall identify and solve cloud architecture configuration and design issues. |

1. **Document Format**
2. All documents shall be provided in a format compatible with the OSI Project Office standard applications (currently, Microsoft Office 2013). In all cases, the Contractor shall verify application compatibility with the State Contract Manager prior to creation or delivery of any electronic documentation. Any deviations to these standards shall be approved by the State Contract Manager.
3. Hardcopy document shall be on standard 8 ½” x 11" paper. Electronic versions shall be stored in a State designated central repository and remain the sole property of the State. The delivery media shall be compatible with State storage devices.
4. An electronic copy of the Deliverable is to be submitted via email to: [cwdsdeliverables@osi.ca.gov.](mailto:cwdsdeliverables@osi.ca.gov.)
5. **CONTRACTOR STAFF**

For the duration of the Agreement, the Contractor staff shall meet all Mandatory Qualifications (MQs) as described herein.

1. **Mandatory Qualifications**

| **MQ#** | **Mandatory Qualifications (MQs)** |
| --- | --- |
| 1. | At least five (5) years of full time equivalent (FTE) experience designing available, cost-efficient, fault-tolerant, and scalable distributed systems on cloud infrastructure. |
| 2. | At least three (3) years of FTE experience using computer networking, storage, and database services. |
| 3. | At least three (3) years of FTE experience with cloud computing deployment and management services. |
| 4. | Must have a computer science or technology-related baccalaureate degree from an accredited college or university, or seven (7) years of experience in computer science or technology-related field of work. |

1. **Staff and Rates**
2. The staff shall perform the tasks described in this SOW, at the rates indicated in the Agreement.
3. Contractor shall be responsible for monitoring the monthly hours worked to ensure the staff is properly allocated to effectively meet the needs of the State for the required tasks of this Agreement.
4. **Reassignment of Staff**
5. The Contractor shall not add, delete, and/or substitute staff without the prior written consent of the State, which consent shall not be unreasonably withheld. The Contractor shall make every reasonable effort to provide suitable substitute staff. The additional and/or substitute staff shall meet all requirements and shall be approved in writing by the State prior to substitute staff beginning work. The State and the Contractor shall negotiate the hourly rate of any additional and/or substitute staff to the Agreement. The hourly rate negotiated shall be dependent, in part, upon the experience and individual skills of the proposed additional and/or substitute staff, and shall not exceed the hourly rate for that position as set forth in the Agreement.
6. The State Project Director or designee may request that Contractor replace a staff member and shall advise Contractor in writing of the basis for the request. In such event, Contractor shall provide a proposed replacement candidate’s resume within fifteen (15) calendar days of the date the requested replacement is made by the State.
7. If deleting staff is acceptable to the State, the Contractor shall submit an Add, Delete or Substitute Staff Request Form, which shall be supplied by the State.
8. If adding or substituting staff is acceptable to the State, the Contractor shall submit the following forms, which shall be supplied by the State:
   1. Add, Delete or Substitute Staff Request Form;
   2. Completed Staff Resume Table;
   3. Signed Staff Reference Forms; and
   4. Updated Bidder Declaration Form (only for subcontracted staff).
9. If the addition, substitution and/or deletion of staff does not increase the total cost of the Agreement, an amendment is not required to make these changes to the Agreement.
10. The Contractor and the State may mutually agree to add additional employee(s) of Contractor to perform services gratuitously under this Agreement at no cost to the State and without the requirement of an Agreement amendment. Contractor shall submit an Add, Delete or Substitute Contractor Request Form to the State Contract Manager for review and approval at least ten (10) business days prior to adding any employee(s) to perform gratuitous services. The provision of gratuitous services shall be subject to all other terms and conditions of this Agreement.
11. **PAYMENTS AND INVOICING**
12. **Invoicing and Payment**
13. For services satisfactorily rendered, and upon receipt and approval of the invoice(s), the OSI agrees to compensate Contractor for actual expenditures incurred in accordance with Exhibit B, Cost Worksheet.
14. Payment for services performed under this Agreement shall be made in accordance with the State of California’s Prompt Payment Act (Government Code § 927 et seq.).
15. Invoices shall be submitted monthly, in arrears, not later than 30 days after the end of the billing period. Invoices must detail the labor category hours (incremental hours shall be billed to the nearest 15 or 30 minutes) with hourly rate(s), and must include the following:
    1. Invoice with the Agreement number;
    2. A certification statement signed by a company official, attesting to the accuracy of the invoice data; and
    3. Copies of signed timesheet(s) or other documentation supporting that the State has provided approval for the items invoiced.
16. Invoices may be submitted electronically via email or by mail.
17. Invoices submitted electronically shall be emailed to: [AccountsPayable@osi.ca.gov](mailto:AccountsPayable@osi.ca.gov). Electronic submissions must:
    * + 1. Be submitted individually. OSI will not accept multiple invoices submitted in a single email.
        2. Contain the following in the Subject line:
           - Company Name
           - Agreement number
           - Invoice number
        3. Be in PDF format and include all of the supporting documentation as required in this Agreement.
18. Invoices submitted by mail shall be sent directly to the following address. Hard copies must be submitted in triplicate and include all of the supporting documentation as required in this Agreement.

**Office of Systems Integration**

**Attn:  Accounting Office**

**2495 Natomas Park Drive, Suite 640**

**Sacramento, CA 95833**

1. Payment to the Contractor will be made on a time and materials basis per the hourly labor classifications set forth in the Agreement for all labor-related costs.
2. The State shall notify the Contractor, in writing, within ten (10) business days after completion of each phase of service of any acceptance problems by identifying the specific inadequacies and/or failures in the services performed and/or the work products produced by the Contractor. If the State receives an invoice for work products or services that have not been accepted by the State, payment for the work product and/or services shall be withheld by the State. The Contractor shall take timely and appropriate measures to correct or remediate the reason(s) for non-acceptance and demonstrate to the State that the Contractor has successfully completed the scheduled work for each work product/service before payment is made. The costs related to rework of unacceptable work products shall not be billed to the State.
3. **Travel and Reimbursement**

The State will not be reimbursing for any travel as part of this Agreement.

1. **POINTS OF CONTACT**

|  |  |
| --- | --- |
| **Contractor – Contract Manager**: | |
| Name, Title: |  |
| Address: |  |
| Phone Number: |  |
| Fax Number: |  |
| E-mail address: |  |

|  |  |
| --- | --- |
| **State – Contract Manager**: | |
| Name, Title: |  |
| Address: |  |
| Phone Number: |  |
| Fax Number: |  |
| E-mail address: |  |

1. **CONTRACTOR RESPONSIBILITIES**
   * + 1. Prior to expiration of the Agreement, the Contractor shall return all State property, including security badges to the State Contract Manager.
       2. All Contractor staff who will provide services pursuant to this Agreement shall complete an Assuming Office Statement of Economic Interests, Form 700 prior to performing any work under this Agreement. Contractor staff shall thereafter file a Form 700 on an annual basis and shall also file a Leaving Office Form 700 within 30 days of ceasing to perform any work under this Agreement. In addition, upon Agreement award and every two (2) years thereafter, each Contractor staff shall complete the State’s online Ethics Training Course, as maintained by the California Office of the Attorney General, and submit the certificate of completion to the OSI Filing Officer.
       3. In accordance with the OSI Acceptable Use Security Policy, Contractor staff authorized to use the OSI’s owned/leased equipment or facilities are required to read the OSI Acceptable Use Security Policy. Each proposed staff must sign the OSI Acceptable Use Security Policy Certification and return it to the State Contract Manager prior to performing any work under this Agreement.
       4. The Contractor shall notify the State Contract Manager, in writing, no later than one (1) calendar day after any of the following events:

The filing of a petition for relief under the United States Bankruptcy Code or the institution of any other insolvency proceedings by, against, or on behalf of Contractor;

The appointment of a receiver or trustee for Contractor;

Make a general assignment for the benefit of creditors;

The dissolution or liquidation of Contractor;

The transfer to any person or entity of more than twenty-five percent (25%) of the assets or ownership interest of Contractor; and/or

The Contractor becoming insolvent. Contractor shall be deemed to be insolvent if it has ceased to pay or has admitted in writing its inability to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code; and/or

The execution by Contractor of a general assignment for the benefit of creditors.

* + - 1. Notwithstanding any other provision of this Agreement, the State, by written notice to the Contractor, may immediately terminate this Agreement in the event upon the occurrence of any of the events set forth in section 9.4.

1. **Items to be furnished by the STATE**
2. The following items shall be provided by the State:
3. Office space for the duration of the Agreement, including desk, chair, desk phone, and Internet connection.
4. Access to office building and office suite.
5. **Items to be furnished by the CONTRACTOR**
6. The following items shall be provided by the Contractor:

Computer equipment including desktop or laptop and printer.

1. **PROBLEM ESCALATION**

The parties acknowledge and agree that certain technical and/or project-related problems or issues may arise, and that such matters shall be brought to the State’s attention. Problems or issues shall normally be reported in regular status reports or in-person meetings. However, there may be instances where the severity of the problem justifies escalated reporting. To this extent, the State Contract Manager shall determine the level of severity, and notify the appropriate State staff, as set forth below. The State staff notified, and the time period taken to report the problem or issue shall be at a level commensurate with the severity of the problem or issue. The State personnel include, but are not limited to, the following:

1. First level, the CWDS Project Director.
2. Second level, the CWDS Project Deputy Director.
3. **Subcontractors**

The Contractor may, with the prior written approval of the OSI, enter into subcontracts with third parties for the performance of any part of the Contractor’s duties and obligations. Any such approval may be rescinded at the OSI’s discretion. The Contractor is responsible and liable for the proper performance and quality of any work performed by any, and all, subcontractors. The OSI reserves the right to reject any subcontractor staff whose performance, in the reasonable judgment of the OSI, is deemed to be substandard. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the OSI for any breach in performance of the Contractor’s duties.

The Contractor warrants and agrees that any subcontract involving its performance under the terms and conditions of the Agreement, as well as all other applicable federal and state laws, rules, and regulations pertinent hereto that have been or may hereafter be established. Also, the Contractor warrants and agrees that all subcontracts shall include a provision that the subcontractor shall indemnify and hold harmless the OSI to the same extent as provided in the Agreement. Any agreement between the Contractor and its subcontractors shall require the subcontractors to adhere to the same performance standards and other standards required of the Contractor.

When a subcontractor ultimately performs all of the services that the Contractor has agreed to provide and the prime Contractor only handles the invoicing of expenditures, then the prime Contractor’s role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a CUF. It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs. Contractors may not subcontract one hundred percent (100%) of the work to be performed pursuant to this Agreement.

1. **INSURANCE REQUIREMENTS**
2. Prior to commencing performance of any work under this Agreement, Contractor shall furnish to the State Contract Manager a certificate of insurance that complies with all the requirements set forth herein. If Contractor is self-insured, Contractor shall provide written proof of adequate self-insurance.
3. General Insurance Requirements
   1. All insurance coverage required herein shall remain in force for the complete term of this Agreement.
   2. The Certificate Holder on the Contractor’s certificate of insurance shall include the OSI's address as: Office of Systems Integration, Attention: Acquisition and Contracting Services Division, 2535 Capitol Oaks Drive, Suite 120, Sacramento, CA 95833 and the Agreement Number <Number>.
   3. Contractor’s insurance company shall carry a rating that is acceptable to the Department of General Services (DGS). If Contractor is self-insured for a portion or all of its insurance, review of Contractor’s financial information, including a letter of credit, may be required.
   4. If the Contractor’s insurance required by this Agreement expires during the term of the Agreement, a new certificate must be received by the State Contract Manager at least ten (10) business days prior to the expiration of the insurance. The new insurance shall meet all the requirements of this Agreement.
   5. The Contractor shall notify the State Contract Manager in writing within five (5) business days prior to the effective date of any cancellation, non-renewal, or material change that affects any insurance coverage required by this Agreement.
   6. In the event that the Contractor fails to maintain in effect at all times the insurance coverage required in this Agreement, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
   7. Any insurance required to be carried under this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.
   8. The State shall not be responsible for any premiums, deductibles, self-insured retention, or assessments on the Contractor’s insurance policy.
   9. Any required endorsement(s) must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
   10. The policy retroactive date must be displayed on the certificate or insurance and must be before the date this Agreement is executed or before the commencement of work.
   11. Inadequate or lack of insurance does not negate the Contractor's obligations under the Agreement.
   12. In the case of the Contractor's utilization of subcontractors to complete the contracted scope of work, the Contractor shall include all subcontractors as insureds under the Contractor's insurance policy or supply evidence of insurance to the State equal to policies, coverage, and limits required of the Contractor, as specified herein.
   13. All insurance required by this Agreement shall allow to the State to pay and/or act as the Contractor’s agent in satisfying any self-insured retention. The choice to pay and/or act as the Contractor’s agent in satisfying any self-insured retention shall be at the sole discretion of the State.
   14. All insurance coverage and limits available to the Contractor shall also be available and applicable to the State.
4. Types of Insurance and Coverage Limits
   1. Commercial General Liability: The Contractor shall maintain commercial general liability insurance with limits of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined with a $2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must name the OSI, the State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under this Agreement.
   2. Automobile Liability: The Contractor shall maintain motor vehicle liability insurance with limits of not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles. If Contractor does not own any commercial automobiles, then 1) its insurance shall cover liability arising out of a motor vehicle including hired and non-owned motor vehicles, and 2) the Contractor shall provide a signed statement on business letterhead stating, “[Contractor’s name] does not own any automobiles. Should [Contractor’s name] purchase an automobile(s) during the term of Agreement [Agreement number] with the Office of Systems Integration, it shall obtain owned auto coverage consistent with the requirements of the Agreement and shall provide evidence of coverage to the State Contract Manager prior to using the automobile(s) in the performance of the Agreement.” The policy must name the OSI, the State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under this Agreement.
   3. Professional Liability: The Contractor shall maintain professional liability/errors and omissions insurance with limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate covering any damages caused by an error, omission, or any negligent acts. Coverage shall be sufficient to cover all duties and obligations undertaken by the Contractor pursuant to this Agreement and shall include, but not be limited to, claims involving infringement or violation of any U.S. Intellectual Property Right, as defined in the <general provisions>. The Contractor shall maintain continuous coverage for up to three years after this Agreement terminates.
   4. Provisions of section 3700 of the California Labor Code require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with such provisions before commencing performance of work under the Agreement.
      1. The Contractor shall maintain statutory workers’ compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement, including special coverage extensions where applicable. Employer's liability limits of $1,000,000 are required. A waiver of subrogation or waiver of right to recover endorsement in favor of the State of California must be attached to the certificate of insurance.
      2. If your business is a sole proprietorship and does not employ any other individual(s), a signed statement on business letterhead stating, "I certify under penalty of perjury under the laws of the State of California that I do not employ any person in any manner as to become subject to the Workers' Compensation laws of California. I further certify that the OSI will be notified within thirty (30) days of any changes which results in the business becoming subject to the Workers' Compensation laws of the State of California." Contractor shall provide this letter to the State Contract Manager prior to the commencement of any work under this Agreement.
5. **Federal procurement clauses**

To the extent applicable under federal law, this Agreement incorporates the contractual provisions required under Title 2 Code of Federal Regulations part 200, subpart F, appendix II, and the Contractor shall comply with these provisions.

1. **California Department of Social Services Background Check**

In addition to the background check requirements set forth in the OSI Special Provisions, Exhibit B (Privacy and Security Controls), prior to the commencement of work, Contractor staff having access to PSCI maintained by the State shall be required to undergo fingerprinting and a criminal records check from the Department of Justice and Federal Bureau of Investigation, at the direction of the California Department of Social Services. The State reserves the right to require that the Contractor replace staff possessing a felony conviction that:

* 1. Occurred within the last seven (7) years from the date of performing work under this Contract;
  2. Was for a crime involving fraud, dishonesty, deceit, or other crime that has a reasonable nexus to the functions or duties of the position, or the information or data to which the staff will have access; and
  3. Was not judicially dismissed or ordered sealed, expunged, or statutorily eradicated.

**SECTION II – REQUEST FOR QUOTE**

**EXHIBIT B - OSI Special Provisions (Privacy and Security Controls)**

Special Provisions shall include any special directions or project specific requirements that are not otherwise stated explicitly in the Agreement. Privacy and Security Control provisions address the Contractor requirements based upon access and usage of the OSI information and equipment.

1. Definitions*.* For purposes of this Exhibit, the following definitions shall apply:
2. Public Information: Any information prepared, owned, used or retained by the state that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250 et seq.) or other applicable state or federal laws.
3. Confidential Information: Any information maintained by the state that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250 et seq.) or other applicable state or federal laws.
4. Sensitive Information: Any information maintained by the state that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information.
5. Personal Information: Any information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.
6. Notice-triggering Personal Information: Personal information (name plus social security number, driver license/identification card number, financial account number, medical/health information, or username/password) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. See Civil Code sections 1798.29 and 1798.82.
7. Contractor Responsibilities.
   1. The Contractor, its employees, agents, and subcontractors (hereinafter collectively referred to as the “Contractor”) shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (PSCI).
   2. The Contractor shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
   3. The Contractor shall promptly transmit to the State Contract Manager all requests for disclosure of any PSCI.
   4. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement, any PSCI to anyone, other than the OSI, without prior written authorization from the State Contract Manager.
   5. The Contractor shall classify data pursuant to the California State Administrative Manual (SAM) 5305.5.
   6. The Contractor shall comply with the following:
      1. The California Information Practices Act (Civil Code sections 1798 et seq.);
      2. Security provisions of the SAM (Chapters 5100 and 5300) and the California Statewide Information Management Manual (SIMM) (Sections 58-C, 58-D, 66-B, 5305-A, 5310-A and B, 5325-A and B, 5330-A, B and C, 5340-A, B and C, 5360B);
      3. The Federal Privacy Act of 1974;
      4. California Penal Code, section 11142; and
      5. California Welfare and Institutions Code, section 10850(b).
   7. The Contractor shall comply with the information security and privacy controls set forth in the National Institute of Standards and Technology (NIST) Special Publication, including but not limited to NIST 800-53R4 (tailored to the OSI Requirements for a Low or Moderate Level Of Concern).
   8. If the Contractor is permitted access PCSI, then the Contractor must comply with the below System Security Review requirements:
      1. The Contractor shall obtain independent security risk assessment consultants to meet the SAM 5305.7 and NIST standards (800-30, 800-37, 800-39, and 800-53) as well as Open Web Application Security Project standards, including, but not limited to, the Development and Testing Guidelines for web services. Assessors shall not:
         1. Create a mutual or conflicting interest with the organizations where the assessments are being conducted.
         2. Self-assess their work.
         3. Act as management or employees of the organizations they are serving.
         4. Place themselves in advocacy positions for the organizations.
         5. Have an affiliation, either personal or business, with the Contractor or subcontractors working under agreement with the OSI.
      2. The OSI shall approve of the independent risk assessment consultants that will perform the security risk assessments prior to the Contractor hiring the firm.
      3. If applicable, the Contractor shall have independent security risk assessment consultants conduct security risk assessments every two years of the OSI Project Systems (e.g. CWS/CMS, CWS-CARES, CMIPS II) and Project Support Systems (e.g. shared drives, web sites, web applications, Clarity, SharePoint, County Access Data, and SARS).
      4. The Contractor shall have the security risk assessment provide a gap analysis using the latest version of the Low or Moderate Tailored Baseline NIST 800-53 security controls.
      5. The State Project Manager or designee and the OSI ISO shall have full access to the results of the independent risk assessment.
      6. The Contractor shall provide to the OSI a Security Assessment Report created by the independent security assessors as defined in NIST 800-53. This report shall contain, as a minimum, identification and score of risks and provide recommended mitigation solutions.
   9. The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PSCI that it creates, receives, maintains, uses, or transmits on behalf of the OSI or other state agencies. The Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor’s operations and the appropriate levels of security (confidentiality, integrity, and availability) for the data based on data categorization and classification and Federal Information Processing Standards (FIPS) Publication 199 protection levels, including at a minimum the following safeguards:
      1. All Contractor staff who assist in the performance of functions or activities on behalf of the OSI, or access or disclose PSCI, shall complete information privacy and security training, at least annually, at the Contractor’s expense. Each Contractor staff who receives information privacy and security training shall sign a certification, indicating the staff’s name and the date on which the training was completed. These certifications shall be retained for a period of three (3) years following Agreement termination.
      2. Appropriate sanctions shall be applied against Contractor staff who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment when appropriate.
      3. All Contractor staff that are or will be working with PSCI shall sign a confidentiality statement prior to having access to PSCI. The statement shall include, at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement shall be renewed annually. The Contractor shall retain each staff’s written confidentiality statement for the OSI inspection for a period of three (3) years following Agreement termination.
      4. Prior to the commencement of work by Contractor’s staff, the Contractor shall: (1) conduct a thorough background check of each proposed staff, (2) evaluate the results, and (3) certify in writing to the State Contract Manager, within 15 business days of Agreement execution (or immediately following the addition of new staff), that there is no indication that the proposed staff may present a risk to the security or integrity of the State’s information technology systems or the data residing therein. The Contractor shall retain each staff’s background check documentation for a period of three (3) years following Agreement termination. If, during the term of the Agreement, the Contractor becomes aware of new or previously unknown information which may impact the staff’s suitability for the position, the Contractor shall immediately notify the State Contract Manager.
      5. All Contractor-owned or managed electronic computing devices, smart phones, removable media storage devices, and/or similar devices, if allowed by the State Contract Manager, shall comply with the following requirements, as applicable:
         1. Encrypted using commercial third-party encryption software that meets the level standards of NIST and FIPS Publication 140-2, Security Requirements for Cryptographic Modules. The encryption solution shall be full disk. All data transmissions shall be encrypted end-to-end using the OSI approved solution, when transmitting PSCI. State data shall not be copied to any unencrypted device or storage media. Contact the State Contract Manager to obtain a copy of the CHHS Security Policy – Data Encryption.
         2. Only the minimum necessary amount of PSCI may be downloaded to a device, and only when absolutely necessary for current business purposes.
         3. Have commercial third-party anti-virus and anti-malware software solutions with a minimum daily automatic update.
         4. Have security patches applied and up to date.
         5. Provide an automatic timeout after no more than 20 minutes of inactivity.
         6. Any device that creates, receives, maintains, uses, or transmits PSCI shall display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. Users shall be directed to log off the system if they do not agree with these requirements.
         7. Log successes and failures of user authentication at all layers.
         8. Log all system administrator/developer access and changes if processing and/or storing PSCI.
         9. Log all user transactions at the database layer if processing and/or storing PSCI.
         10. Use role based access controls for all user authentications, enforcing the principle of least privilege.
         11. All systems that are accessible via the Internet or store PSCI shall actively use a comprehensive third-party real-time host based intrusion detection and prevention solution.
         12. All systems processing and/or storing PSCI shall have a routine procedure in place to review system logs for unauthorized access.
         13. All systems processing and/or storing PSCI shall have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity, and availability of data.
      6. All emails that include PSCI shall be sent in an encrypted method using an OSI approved solution.
      7. All users shall be issued a unique user name for accessing PSCI. Passwords shall not be shared. Passwords shall adhere to the following standards:
         1. Be a non-dictionary word.
         2. Not be stored in a readable format on the computer.
         3. Be changed every 90 days.
         4. Be changed if revealed or compromised.
         5. Be at least eight characters.
         6. Password shall be composed of characters from at least three of the following four groups from the standard keyboard:
            1. Upper case letters;
            2. Lower case letters;
            3. Arabic numerals; or
            4. Non-alphanumeric characters.
      8. The Contractor shall meet the standards as set forth in NIST 800-88 for destruction of data. All PSCI shall be wiped from systems when the data is no longer necessary. The wipe method shall conform to Department of Defense standards for data destruction. If data was Personally Identifiable Information (PII) as defined by California Civil Code section 1798.3(a), or Protected Health Information (PHI) as defined by the HIPAA Privacy Rule – 45 CFR Part 160, 162, 164, then the Gutmann 35 pass wipe is required. All PSCI on removable media shall be destroyed pursuant to this section when the data is no longer necessary. Once data has been destroyed and logged, the State Contract Manager shall be notified and shall be provided destruction logs.
      9. Any remote access to PSCI shall be executed over an encrypted method approved by the OSI. All remote access shall be limited to minimum necessary and least privilege principles. Remote access shall meet security standards as defined in SAM 5360.1 and SIMM 5360-A.
      10. The Contractor shall establish a documented plan to enable continuation of critical business processes and protection of the security of PSCI in the event of an emergency. An emergency is an interruption of business operations for more than 24 hours.
      11. The Contractor shall have established documented procedures to backup PSCI to maintain retrievable exact copies of PSCI. The plan shall include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore PSCI should it be lost. At a minimum, the schedule shall be a weekly full backup and monthly offsite storage of data.
      12. PSCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, or desk. Unattended means that information is not being observed by an employee authorized to access the information.
      13. Visitors to areas where PSCI is contained shall be escorted and PSCI shall be kept out of sight while visitors are in the area.
      14. PSCI shall not be removed from the premises of the Contractor except with express written permission of the OSI.
      15. Fax numbers shall be verified with the intended recipient before sending faxes containing PSCI. Contractor fax machines shall be located in secure areas, per SAM 5365.1.
      16. PSCI shall only be mailed using secure methods. Large volume mailings of PSCI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail shall be encrypted with the OSI approved solution.
   10. The Contractor shall work cooperatively with the State to respond timely and accurately to public records requests.
   11. The Contractor shall designate a security officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with the OSI.
   12. The Contractor shall be responsible for facilitating the security incident process as described in California Civil Code section 1798.29(e), California Civil Code section 1798.82(f), and SAM 5340, Incident Management. The Contractor shall notify the OSI immediately by telephone call plus email upon the discovery of breach of PSCI or discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI. Notification shall be provided to the State Contract Manager, the OSI Privacy Officer and the OSI Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves PSCI, notification shall be provided by emailing the OSI Information Security Officer at [osiinfosecurity@osi.ca.gov](mailto:osiinfosecurity@osi.ca.gov). In addition, the Contractor shall:
       1. Take prompt corrective action to mitigate any risks or damages involved with the incident and to protect the operating environment.
       2. Take any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
       3. Immediately investigate the incident within twenty-four (24) hours of the discovery and provide the following information to the State Contract Manager, the OSI Privacy Officer, and the OSI Information Security Officer:
          1. What data elements were involved and the extent of the data involved in the breach;
          2. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PSCI;
          3. A description of where the PSCI is believed to have been improperly transmitted, sent, or utilized;
          4. A description of the probable causes of the improper use or disclosure; and
          5. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
       4. Provide regular (every 24 hours) updates on the progress of the investigation to the State Contract Manager, the OSI Privacy Officer, and the OSI Information Security Officer.
       5. Provide a written report of the investigation to the State Contract Manager, the OSI Privacy Officer, and the OSI Information Security Officer within seven (7) business days of the discovery of the incident. The report shall follow the format of SIMM 5340-B and include the information specified in section 2(l)(iii), as well as a detailed corrective action plan, including information on measures that were taken to mitigate the improper use or disclosure.
       6. Be responsible for all costs incurred by the state due to any security incident resulting from the negligent acts of Contractor staff. If the state determines that notice to the individual(s) whose data has been lost or breached is appropriate, the Contractor will bear any and all costs associated with the notice or any mitigation selected by the state. These costs include, but are not limited to, consultant time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data.
   13. The OSI may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required herein. The Contractor shall promptly remedy any violation of any provision of this Exhibit.
   14. The contact information for the state contacts referenced herein are set forth below. The OSI reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

|  |  |  |
| --- | --- | --- |
| **OSI State Contract Manager** | **OSI Privacy Officer** | **OSI Information Security Officer** |
| See the Agreement for State Contract Manager information | Privacy Officer  c/o OSI Legal Division  Office of Systems Integration  2495 Natomas Park Drive, Suite 515  Sacramento, CA 95833  Email: [david.haynes@osi.ca.gov](mailto:david.haynes@osi.ca.gov)  Telephone: (916) 263-0744 | Information Security Officer  OSI Information Security Office  Office of Systems Integration  2525 Natomas Park Drive, Suite 370  Sacramento, CA 95833  Email: [osiinfosecurity@osi.ca.gov](mailto:osiinfosecurity@osi.ca.gov)  Telephone: (916) 263-4052 or  (916) 825-9213 |

**SECTION II – REQUEST FOR QUOTE**

**CWS-CARES GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.
2. **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
3. **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
4. "**Attachment**" means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by the Contractor.
5. **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability Company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
6. **“Buyer”** means the State’s authorized contracting official.
7. **“Commercial Hardware”** means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
8. **“Commercial Software”** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
9. **“Contract”** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
10. **“Custom Software”** means Software that does not meet the definition of Commercial Software.
11. **“Contractor”** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.
12. **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
13. **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
14. **“Deliverables”** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
15. **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific “Designated CPU(s)” are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
16. **"Documentation”** means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
17. **"Equipment** “is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
18. **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment’s intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment’s intended functions shall be deemed to be an Equipment Failure.
19. **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
20. **“Goods”** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
21. **"Hardware**" usually refers to computer Equipment and is contrasted with Software. See also Equipment.
22. **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
23. **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
24. **"Machine"** means an individual unit of a Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
25. **"Machine Alteration"** means any change to a Contractor- supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
26. **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
27. **“Manufacturing Materials”** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
28. **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
29. **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
30. **"Operating Software"** means those routines, whether or not Section 12100), and 3.6 (commencing with Section 12125) identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
31. **"Operational Use Time**" means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
32. **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
33. **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
34. **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
35. **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor’s Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
36. **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
37. **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
38. **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
39. **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
40. **“State”** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
41. **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
42. **“U.S. Intellectual Property Rights” means** intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
43. **CONTRACT FORMATION:**
44. If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
45. If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
46. If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
47. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
48. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
49. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
50. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
51. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
52. The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor’s violation of this provision.
53. The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
54. 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 is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys’ fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services 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 reasonably cooperate in the defense and in any related settlement negotiations.
55. If this Contract is in excess of $554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
56. To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to its attention regarding accessibility of its products or services.
57. **CONTRACTOR’S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
    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 is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys’ fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services 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 reasonably cooperate in the defense and in any related settlement negotiations.
58. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State’s consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.
59. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
60. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
61. These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: “Unless otherwise specified in the Statement of Work” provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
62. Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
63. Other Special Provisions;
64. Statement of Work, including any specifications incorporated by reference herein;
65. Cost worksheets; and
66. All other attachments incorporated in the Contract by reference.
67. **PACKING AND SHIPMENT:**
68. All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
69. Show the number of the container and the total number of containers in the shipment; and
70. The number of the container in which the packing sheet has been enclosed.
71. All shipments by the Contractor or its subcontractors must include packing sheets identifying: the State’s Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
72. Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State’s Transportation Management Unit within the Department of General Services, Procurement Division.
73. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.
74. The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
75. If “prepay and add” is selected, supporting freight bills are required when over $50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
76. On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, the Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
77. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at the Contractor’s expense or utilize any other rights available to the State at law or in equity.
78. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
79. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
80. When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor’s existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract’s requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor’s quality assurance System or other similar business practices related to performance of the Contract.
81. All Deliverables may be subject to inspection and test by the State or its authorized representatives.
82. The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
83. Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
84. The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
85. Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.
86. **SAMPLES:**
87. Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
88. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at the Contractor’s expense.
89. **WARRANTY:**
90. Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon Acceptance of all Deliverables or services required upon completion of this Contract and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will b~~e~~ free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that it’s Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State’s approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
91. **[DELETED]**
92. Unless otherwise specified in the Statement of Work:
93. The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
94. The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or misuse by the State.
95. Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor’s warranty obligations set forth above.
96. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
97. Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this section, the State’s exclusive remedy and the Contractor’s sole obligation will be limited to:
98. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
99. should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State’s Cost to Cover. “Cost to Cover” means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on the Contractor’s liability set forth in the Section entitled “Limitation of Liability.”
100. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESs OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
101. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.
102. **INSURANCE:** The Contractor shall maintain all commercial general liability insurance, workers’ compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an “additional insured” if required under the Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers’ compensation policy.
103. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
104. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature or the federal government. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor. In addition to subsection a), payment pursuant to this Contract, whether in whole or in part, is subject to and contingent upon the continuing availability of federal and State funds for the purposes hereof. If such funds, or any part thereof, become unavailable, other than for non-appropriation, as reasonably determined by the State, or if the funds the State relied upon to establish or continue this Contract are withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on such funding, the State in addition to its other remedies may proceed with any of the following alone or in conjunction:
105. issue a Stop Work order for this Contract or the portion affected thereby;
106. issue a Work Authorization to the extent the State determines is necessary; or
107. five (5) days after providing notice, terminate this Contract, in whole or in part, under subsection a) above and make payment to Contractor as provided in subsection a) above as a Termination for Non-Appropriation of Funds.
108. The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
109. THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN W HICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO THE CONTRACTOR’S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
110. **TERMINATION FOR THE CONVENIENCE OF THE STATE:**
111. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State’s interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
112. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
113. Stop work as specified in the Notice of Termination.
114. Place no further subcontracts for materials, services or facilities, except as necessary to complete the continuing portion of the Contract.
115. Terminate all subcontracts to the extent they relate to the work terminated.
116. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
117. After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
118. The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
119. Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
120. The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
121. The total of:
122. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
123. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
124. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
125. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.
126. **TERMINATION FOR DEFAULT:**
127. The State may, subject to the clause titled “Force Majeure” and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
128. Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
129. Make progress, so that the lack of progress endangers performance of this Contract; or
130. Perform any of the other provisions of this Contract.
131. The State’s right to terminate this Contract under sub-section a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State’s cure notice, which in no event will be less than five (5) days, unless the Statement of Work calls for a different period.
132. If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled “Limitation of Liability”). However, the Contractor shall continue the work not terminated.
133. If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
134. completed Deliverables,
135. partially completed Deliverables, and,
136. subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
137. The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
138. If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
139. Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
140. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled “Limitation of Liability.”
141. **FORCE MAJEURE:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
142. Acts of God or of the public enemy, and
143. Acts of the federal or State government in either its sovereign or contractual capacity. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
144. **RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
145. In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
146. In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor’s expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
147. **[DELETED]**
148. The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.
149. **LIMITATION OF LIABILITY:**
150. Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor’s liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), “Purchase Price” will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), “Purchase Price” will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.
151. The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled “Compliance with Statutes and Regulations” (ii) to liability under the General Provisions, entitled “Patent, Copyright, and Trade Secret Indemnity” or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the Contractor’s negligence or willful misconduct; or (iv) to costs or attorney’s fees that the State becomes entitled to recover as a prevailing party in any action.
152. The State’s liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State’s sovereign immunity or any other immunity from suit provided by law.
153. In no event will either the Contractor or 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, except (i) to the extent that the Contractor’s liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Contractor’s liability for such damages arises out of sub- section b)(i), b)(ii), or b)(iv) above.
154. **CONTRACTOR’S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
155. 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 delivery, installation, acceptance, and use of the Deliverables either at the Contractor’s site or at the State’s place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
156. The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.
157. **INDEMNIFICATION:** The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys’ fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:
158. The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
159. 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 is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys’ fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services 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 reasonably cooperate in the defense and in any related settlement negotiations.
160. **INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
161. **REQUIRED PAYMENT DATE:** Payment will be made inaccordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
162. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
163. **NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
164. **CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
165. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.
166. **NEWS RELEASES:** Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
167. **DOCUMENTATION:**
168. The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State to provide for optimal user experience in its use of the Equipment or Software provided hereunder. The Contractor shall provide such Documentation throughout the term of the Contract on an ongoing and iterative basis. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
169. If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor’s then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor’s methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation.
170. **RIGHTS IN WORK PRODUCT:**
171. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including the Contractor’s administrative communications and records relating to this Contract (collectively, the “Work Product”), shall be the property of the State, with the intention of providing an open-source license chosen by the State. The provisions of this sub-section a) may be revised in a Statement of Work.
172. Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order (“Pre-Existing Materials”) that are not a functional part of any Deliverable do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with the Contractor’s or its affiliates’ ownership of Pre-Existing Materials.
173. Notwithstanding anything to the contrary in this Contract, the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, any software, modifications, and documentation provided by the Contractor hereunder.
174. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
175. This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
176. **SOFTWARE LICENSE:** The Contractor shall use open source software wherever possible for all Software required for the development or use of Deliverables. The Contractor shall obtain written approval from the State Project Director or designee for all Software proposed by the Contractor prior to its use for performance under this Contract. Contract award to Contractor shall constitute initial approval of any Software proposed; provided, however, that the Contractor shall obtain final written approval, through the Change Request process, from the State Project Director or designee of any change to proposed Software after Contract award, prior to its use for performance under this Contract. The Contractor shall provide license information for all Software utilized by Contractor for performance under this Contract. The Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a prepaid, perpetual, irrevocable, royalty-free, non-exclusive, license to use all Software to be provided by the Contractor to the State pursuant to this Contract. The Contractor shall execute a written agreement naming the State as licensee memorializing the terms of this license in a form acceptable to the State. If any technical specification or documentation of the above-described Software provides implementation guidance, the Contractor shall comply with that guidance. If implementation guidance is not available, for any open source software, the Contractor shall attach or include the license within the work itself (e.g. code comments at the beginning of a file or contained in a license file within a software repository).The Contractor shall develop all Custom Software written pursuant to this Contract in the open from the first Calendar Day of Development.
177. The State may use the Software in the conduct of its own business, and any division thereof
178. **[DELETED]**
179. **[DELETED]**
180. Approval of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.
181. **PROTECTION OF PROPRIETARY SOFTW ARE AND OTHER PROPRIETARY DATA:**
182. The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the State’s exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
183. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
184. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.
185. **[DELETED]**
186. **FUTURE RELEASES:** Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State’s option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.
187. **[DELETED]**
188. **PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**
189. Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys’ fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party (“Third Party Obligation”) and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section ). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:
190. The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
191. 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 (a) 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 is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys’ fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
192. Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other infringing Deliverables makes the retention of otherDeliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.
193. The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
194. The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
195. The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
196. The modification initiated by the State, or a third party at the State’s direction, of any Deliverable furnished hereunder; or
197. The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
198. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.
199. **DISPUTES:**
200. The parties shall deal in good faith and attempt to resolve potential disputes informally.
201. Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State’s instructions regarding this Contract. Contractor’s failure to diligently proceed in accordance with the State’s instructions regarding this Contract shall be considered a material breach of this Contract.
202. Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the management-level designee of the State. If the management-level designee of the State fails to render a final decision within fifteen (15) days after receipt of the Contractor’s request for a final decision, it shall be deemed a final decision adverse to the Contractor’s contentions. The State’s final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction, or with the Victims Compensation Government Claims Board, to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
203. **[DELETED]**
204. The date of decision in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.
205. **STOP WORK:**
206. The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
207. Cancel the Stop Work Order; or
208. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
209. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
210. The Stop Work Order results in an increase in the time required for, or in the Contractor’s cost properly allocable to the performance of any part of this Contract; and
211. The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
212. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
213. The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
214. **EXAMINATION AND AUDIT:** The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. The 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. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.
215. **TIME IS OF THE ESSENCE:** Time is of the essence in this Contract.

**[Original 47. DELETED**]

1. **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 PCC Section 10353.
2. **[DELETED]**
3. **NONDISCRIMINATION CLAUSE:**
4. During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The 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.
5. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
6. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor’s failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
7. **ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
8. In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it 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. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
9. If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor 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 assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
10. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
11. the assignee has not been injured thereby, or
12. the assignee declines to file a court action for the cause of action.
13. **DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
14. 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, as required by Government Code Section 8355(a).
15. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
16. the dangers of drug abuse in the workplace;
17. the person's or organization's policy of maintaining a drug-free workplace;
18. any available counseling, rehabilitation and employee assistance programs; and,
19. penalties that may be imposed upon employees for drug abuse violations.
20. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
21. will receive a copy of the company's drug-free policy statement; and,
22. will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
23. **[DELETED]**
24. **SWEATFREE CODE OF CONDUCT:**
25. Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov,](http://www.dir.ca.gov/) and Public Contract Code Section 6108.
26. The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor’s compliance with the requirements under paragraph (a).
27. **RECYCLED CONTENT REQUIRMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. 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 (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).
28. **CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of $100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
29. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
30. The Contractor, to the best of its knowledge is fully complying 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.
31. **AMERICANS WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
32. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
33. **[DELETED]**
34. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.
35. **DOMESTIC PARTNERS**: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.
36. **SMALL BUSINESS PARTICIPATION AND DVBE**

**PARTICIPATION REPORTING REQUIREMENTS:**

1. If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841).
2. If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; 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. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
3. **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).

a) false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)