



CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED  
TRANSPORTATION FINANCING AUTHORITY

915 Capitol Mall  
Sacramento, CA 95814  
p (916) 651-8157  
f (916) 657-4821  
caeatfa@treasurer.ca.gov  
www.treasurer.ca.gov/caeatfa

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**CALIFORNIA ALTERNATIVE ENERGY  
AND ADVANCED TRANSPORTATION  
FINANCING AUTHORITY (CAEATFA)**

**REQUEST FOR PROPOSAL-Secondary  
CONTRACT NO. CAEATFA10-16  
Trustee Services for the  
Property Assessed Clean Energy (“PACE”)  
Loss Reserve Program**

**Notice to Prospective Proposers**

April 12, 2017

You are invited to review and respond to this Request for Proposal (“RFP”) Number CAEATFA10-16. The California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or the “Authority”) seeks to retain a firm to serve as trustee (the “Trustee”) to manage funds for the Property Assessed Clean Energy (“PACE”) Loss Reserve Program. Interested trustee firms are invited to submit proposals in response to this RFP. In submitting your proposal, you must comply with these instructions.

Note that all contracts entered into with the State of California must include, by reference, General Terms and Conditions (GTC) and Contractor Certification Clauses (CCC) that may be viewed and downloaded at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>. If you do not have Internet access, a hard copy can be provided by contacting the person listed below.

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

Dallas Aicega  
California Alternative Energy and  
Advanced Transportation Financing Authority  
915 Capitol Mall  
Sacramento, CA 95814  
(916) 653-3303  
[Dallas.Aicega@treasurer.ca.gov](mailto:Dallas.Aicega@treasurer.ca.gov)  
with copy to [caeatfa@treasurer.ca.gov](mailto:caeatfa@treasurer.ca.gov)

Questions regarding this RFP must be submitted in writing no later than April 25, 2017 at 12:00 p.m. (noon). Responses to the questions will be posted within several days on the Department of General Services (“DGS”) website and CAEATFA website.

Please note that no verbal information provided will be binding upon the State unless such information is issued in writing as an official addendum.

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

### **1. Introduction**

The California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or the “Authority”) seeks proposals from which to select a trustee firm (“Trustee” or “Contractor”) to manage funds for the Property Assessed Clean Energy (“PACE”) Loss Reserve Program. The Trustee will hold and disburse funds on behalf of CAEATFA and provide monthly account statements and a monthly claim activity summary to CAEATFA.

The selection of the Trustee will be based not only on the proposed fees, but also on assurances that the selected firm will provide a reasonable level of competent and responsive service to CAEATFA in all subject areas described in the Scope of Services (Section A.3), and will meet the Minimum Qualifications for Proposers (Section B). The firm must be free from actual conflicts of interest not only at the time of selection, but throughout the term of the contract as well. The firm must be immediately available to assume services.

All proposals submitted to perform these services must explain the experience and qualifications of the firm which demonstrate the firm’s ability to provide these services. Failure to provide all of the requested information, or deviation from the required format, may result in disqualification. CAEATFA reserves the right to reject any or all proposals.

CAEATFA anticipates entering into a two-year contract (the “Contract” or “Agreement”) with the allowance for a one-year extension, for a total contract term of up to three years. The Contract amount **may not exceed Two Hundred Thousand Dollars (\$200,000.00)** for the entire service term (including all optional extensions).

Attached as Section F is a proposed sample contract that will be the result of this RFP. It includes the STD 213 Standard Agreement and other standard contract provisions to which the Trustee will be bound.

### **2. CAEATFA Background and Overview**

The California Alternative Energy and Advanced Transportation Financing Authority, a public instrumentality, was created in 1980 to assist specified entities by providing credit enhancements, access to low-cost financing through private activity tax-exempt bonds and loans, and other forms of financial assistance.

CAEATFA staff takes direction from its Board in deciding which projects to assist. The Board consists of five members: the State Treasurer, who serves as chairperson of the Authority; the State Controller; the Director of the Department of Finance; the Chairperson of the Chairperson of the California Energy Commission (CEC); and the President of the California Public Utilities Commission (CPUC).

The enabling legislation is contained in the California Alternative Energy and Advanced Transportation Financing Authority Act, Division 16 (commencing with Section 26000) of the California Public Resources Code.

#### **PACE Loss Reserve Program Overview**

PACE is a financing method that uses community facility districts or improvement districts to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements. PACE improvements can be funded by bonds or other sources of capital that are repaid through the property owner’s property

tax bill. PACE allows homeowners to finance retrofits for up to 30 years with no money down. Additionally, PACE obligations have lien-priority over other voluntary obligations.

In 2010, the Federal Housing Finance Agency (“FHFA”) issued a pronouncement that PACE programs “present significant safety and soundness concerns” and violate standard mortgage provisions since PACE liens have priority over mortgages. FHFA directed federal mortgage enterprises to adjust their lending criteria in areas with residential PACE programs and to require PACE liens be extinguished before issuing or refinancing a mortgage. Following this directive, most residential PACE programs halted throughout the country, including many of the existing residential PACE programs in California.

In response to FHFA’s concerns and to further support the development of PACE in California, Senate Bill 96 (Committee on Budget and Fiscal Review, Chapter 356, Statutes of 2013) authorized CAEATFA to develop and administer the PACE Loss Reserve Program with an initial allocation of \$10 million. The Program seeks to address FHFA’s concerns regarding the senior lien priority of PACE financing by reimbursing first mortgage lenders for specified losses resulting from the existing of a PACE lien on a property during foreclosure or forced sale for unpaid property taxes. To that end, the Loss Reserve covers the following losses:

- a. PACE payments paid while a first mortgage lender is in possession of a property subject to a PACE assessment.
- b. Any losses to the first mortgage lender up to the amount of outstanding PACE assessments in a forced sale for unpaid taxes or special assessments.

PACE administrators may participate in the Program by applying to CAEATFA and demonstrating that they meet the Program’s eligibility requirements as established in statute and regulation. These regulations can be found at:

<http://www.treasurer.ca.gov/caeatfa/pace/regulations/index.asp>.

Once enrolled, each financing originated by an enrolled PACE administrator and included in its semi-annual reports must be in compliance with the program regulations, and may be covered by the loss reserve for its full term, or until the loss reserve is exhausted. Additionally, PACE administrators that applied to the Program on or before June 9, 2014 were allowed to enroll their existing portfolios under the loss reserve to maximize the Program’s effectiveness. To allow new PACE programs (created on or after March 10, 2014) to enroll in the Program without delaying their operations, the loss reserve also covers financings originated up to 30 days before their enrollment date.

Since the Program launched in May 2014, CAEATFA has enrolled 14 PACE programs: mPOWER Placer, mPOWER Folsom, Berkeley Financing Initiative for Renewable and Solar Technology (“FIRST”), Sonoma County Energy Independence Program (“SCEIP”), CaliforniaFIRST, Western Riverside Council of Governments (“WRCOG”) Home Energy Renovation Opportunity (“HERO”) Program, San Bernardino Associated Governments (“SANBAG”) HERO Program, California HERO Program, AllianceNRG, Los Angeles HERO, CaliforniaFIRST in Los Angeles County, Ygrene Works, PACEfunding, and California Municipal Finance Authority (“CMFA”) PACE Program. The loss reserve currently supports over 81,000 residential PACE financings with an outstanding value of over \$1.86 billion.

CAEATFA facilitates financial transactions through the PACE Trustee as needed to fully implement the PACE Loss Reserve Program. This RFP provides the specific tasks and deliverables associated with managing the PACE Loss Reserve Trust Account.

Upon awarding this Trustee contract, CAEATFA will deposit \$10 million in a trust account established by the Trustee. Local PACE programs will apply to CAEATFA to participate in the Loss Reserve. Once enrolled, these programs will report to CAEATFA semi-annually. If a home

which has a PACE loan from an enrolled PACE program goes into foreclosure, that PACE program may submit a claim to CAEATFA. CAEATFA will determine whether the claim is eligible and instruct the Trustee to draw funds from the trust account payable to either the PACE program or the first mortgage lender on the property as directed. To date, there have not been any claims on the reserve.

### **3. Scope of Services**

Under the general direction of the Executive Director of CAEATFA, the Contractor agrees to provide services as described below:

#### **a. Establishing the Trust Account:**

- i. The Trustee will establish, maintain and hold a separate fund designated as the PACE Loss Reserve Trust Account (the "Program Fund"). Upon establishment of the Program Fund, CAEATFA will deposit such funds as determined by its Executive Director or designee.
- ii. Any and all established accounts will be interest-bearing demand accounts unless the Trustee is directed by CAEATFA to place funds in another account type, and shall not require any fees or costs to be paid by the Trustee or CAEATFA.
- iii. Upon the written direction of the Authority to the Trustee, the monies in the Program Fund will be invested by the Trustee in any investment permitted by Government Code Section 16430.
- iv. The Trustee will be authorized and directed in writing by CAEATFA's Executive Director or designee to transfer, hold, invest and disburse monies in the Program Fund, and future accounts.

#### **b. Funding PACE Loss Reserve Claim Payments:**

- i. CAEATFA will submit a written Request for Disbursement ("Requisition") to the Trustee. Each Requisition must contain the following information:
  - (a) The name of the enrolled PACE program;
  - (b) The name and address of the entity to which the payment is due;
  - (c) The purpose for which such payment is to be made;
  - (d) The amount to be paid;
  - (e) The date by which such payment is due; and
  - (f) Certification that the payment directed therein has been properly incurred and is a proper charge against the claim payment.

Each Requisition will be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Upon receipt of a Requisition signed by CAEATFA, the Trustee shall pay the amount set forth therein as directed by the terms thereof.

- ii. The Trustee will disburse the claim payment from the Program Fund. For each claim payment, the Trustee will track activity for reporting purposes.

#### **c. Maintenance of Account(s):**

- i. The Trustee will hold, maintain and monitor the Program Fund; perform various account related activities; provide recordkeeping information on all transactions and claim activity; and provide monthly statements (by the 15<sup>th</sup> day of the following month) to CAEATFA.

- ii. The monies deposited in the Program Fund held by the Trustee are the property of CAEATFA, but held for the benefit of the enrolled PACE programs.
  - iii. CAEATFA may provide written direction to the Trustee to remit any monies in the Program Fund to CAEATFA.
  - iv. At such time as CAEATFA in its discretion determines to terminate its role in the PACE Loss Reserve Program, the Trustee will be authorized and directed in writing by CAEATFA's Executive Director or designee to remit any money remaining in the Program Fund to CAEATFA.
  - v. The Trustee will meet, as needed, with CAEATFA and its staff at a location to be determined by CAEATFA staff.
  - vi. In all respects, the Trustee will represent the best interests of CAEATFA and the State of California in all transactions and proceedings.
- d. Reporting and Other Requirements:
- i. Monthly Account Statements. The Trustee will provide monthly bank statements (by the 15<sup>th</sup> day of the following month) to CAEATFA for the account it maintains in association with the PACE Loss Reserve. These statements will include the account balance and any interest earned, as well as all transaction activities associated with the account during the statement period, and any changes or transfers related to the account.
  - ii. Monthly Claim Activity Summary. Through the collection of data from submitted claims, the Trustee will provide, on a monthly basis (by the 15<sup>th</sup> day of the following month), the following data for claims that includes:
    - (a) An accounting of the Program Fund;
    - (b) The name of the enrolled PACE program;
    - (c) The qualified claim number;
    - (d) The date the claim was paid; and
    - (e) The amount of claim paid.
  - iii. On-Demand Electronic Account Viewing. The Trustee will provide designated CAEATFA staff with on-demand electronic viewing access to the Program Fund and any other account established on behalf of CAEATFA.
  - iv. The Trustee will perform such other duties or activities related to the specific duties listed above as may be specifically requested in writing by CAEATFA in connection with the Program, including on CAEATFA's behalf in communications with enrolled PACE programs.

#### **4. Term of Agreement**

The term of the Agreement will be for a two-year period with the option for CAEATFA to extend for one additional year. The effective date is either the proposed award date (Section C, Item 1), or the date of approval of the Agreement by the Department of General Services. No work shall commence until the effective date.

#### **B. MINIMUM QUALIFICATIONS FOR PROPOSERS**

**The firm must have, at a minimum, the following qualifications and experience:**

**1. Any Trustee appointed under the Agreement must be a trust company, corporation or bank having the powers of a trust company that either:**

- a. Has a combined capital and surplus of at least fifty million dollars (\$50,000,000.00), and is subject to supervision or examination by federal or state authority; or
- b. Is a wholly-owned subsidiary of a bank, trust company, corporation or bank holding company with an aggregate combined capital and surplus of at least fifty million dollars (\$50,000,000.00), and is subject to supervision or examination by federal or state authority.

If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee must, at all times, during the term of the Contract meet these minimum qualifications.

- c. Must have internet access and email.

**2. Any Trustee appointed under the Agreement must maintain an office located in California.**

**C. PROPOSAL REQUIREMENTS AND INFORMATION**

**1. Key Action Dates**

All firms are hereby advised of the following schedule and will be expected to adhere to the required dates and times. Note: dates may be subject to change due to administrative processing.

<u>Date</u>	<u>Action</u>
April 12, 2017	RFP Advertisement – California State Contracts Register (CSCR). RFP available to prospective Proposers.
April 25, 2017	Written questions must be received by CAEATFA by 12:00 noon. Responses will be posted within a couple of days on the DGS and CAEATFA websites.
May 8, 2017	Proposals are due and must be received at the CAEATFA office at 915 Capitol Mall, Sacramento, CA 95814, by 4:00 p.m.
May 8 – 10, 2017	Evaluation and selection of firm by evaluation committee. Determination of responsive proposals.
May 11, 2017	Notice of Intent to Award
June 12, 2017	Proposed Award Date

**2. Content and Format of Proposals**

This RFP, the evaluation of the proposals and the award of any resultant contract will be governed generally by the rules of this section and applicable State policy. The Bidder Instructions (<http://www.documents.dgs.ca.gov/pd/modellang/GSPD451-110911.pdf>) provide general information for potential bidders describing how to provide a responsive bid.

Proposals must be organized in the format shown below and contain all of the information listed:

- a. Table of Contents.
- b. Executive Summary. Summarize the highlights of the proposal and address areas for the types of services required.
- c. Qualifications and Experience of the Contractor Firm.

Briefly and specifically describe the overall experience of your firm that demonstrates your ability to successfully meet the Minimum Qualifications for Proposers (Section B).

- i. Firm Qualifications and Experience as Trustee. Describe your firm's qualifications and experience in providing trustee services for other government programs, if any, and similar programs. Include the locations of firm offices and a discussion of any unique strengths possessed by your firm. Include the name, title and telephone number of a contact for the firm.

Provide a listing of other state or local governments for which the firm has acted, or is currently acting as trustee; the length of time engaged on such projects; the nature of services provided; and a contact person with address and telephone number.

- ii. Personnel Experience and Qualification. Include an organization chart showing functions, positions, and titles of professionals in your firm, including any subcontractor firm(s). Identify the role of each staff member who will serve in the contract, his/her title, and the percentage of the total firm effort that shall be provided by that individual.

Complete Attachment 3 regarding the key personnel who will be directly involved in providing the services required under the contemplated contract. Provide a brief description of the background and experience of each individual, including years of experience with similar programs, if any, and similar types of programs.

Provide detailed resumes for individuals who will be directly involved in providing the services under the proposed Agreement, including any proposed subcontractor firms and their employees.

- iii. Conflicts of Interest. Firms must disclose any business relationships which may be construed to be potential conflicts of interest. CAEATFA may request interviews of firms for the purpose of clarifying any situation that could be construed to be a conflict of interest, and has the sole and exclusive authority to disqualify a firm if CAEATFA determines a conflict exists.
- iv. Legal Actions. Describe any and all instances within the past 24 months of your firm's or any of its principals' involvement in any litigation, arbitration, disciplinary or other official actions arising from the firm's business.
- v. Investment of Public Funds. Please identify any known restrictions and/or limitations your firm may have regarding the investment of public funds.

- d. Fee Schedule. The Cost Proposal Work Sheet (Attachment 5) shall be the basis for the cost portion of the evaluation and selection process. Proposals must include the firm's fee schedule for standard tasks that will be required of the Trustee. The fee schedule should provide fee estimates based on the following scenario:

- i. Scenario. The scenario below is only given for purposes of evaluating the fees portion of your proposal. Actual transaction volume under the Agreement may vary considerably depending on demand for the Program, actual claim rates and economic conditions; however, proposals submitted with fee schedules not in compliance with these requirements shall be rejected):

- Average claim amount of \$5,000.00;
- Forty-five (45) claims in the first year;

- Sixty-five (65) claims in year two;
  - Eighty-five (85) claims in year three;
- ii. Considering the Program volume estimates in the scenario above, please provide your firm's annual fee schedule for the tasks listed in (a) – (d) below:
- (a) establishment and maintenance of the Program Fund, including potential transfer to new trustee at the end of the contract term;
  - (b) funding claim payments;
  - (c) semi-annual fee for trust administration; and
  - (d) outline of other reimbursable expenses, if applicable.

The following formula will be used for the award of cost points:

The lowest-cost proposal is awarded the maximum cost points (35 points). Other proposals are awarded cost points based on the following calculation:

$$\begin{aligned} & (\text{Lowest Bidder's Cost/Other Bidder's Cost}) = (\text{factor}) \\ & \text{Cost points for other Bidder} = (\text{factor}) \times \text{maximum cost points} \end{aligned}$$

**EXAMPLE:** A maximum of 35 points is available

$$\begin{aligned} \text{Lowest Bidder's Cost Proposal} &= \$7,500 \\ \text{Other Bidder's Cost Proposal} &= \$10,000 \end{aligned}$$

$$\begin{aligned} (\text{Lowest cost proposal} / \text{Other cost proposal}) &= \$7,500 / \$10,000 = \frac{3}{4} \\ (\text{Cost points awarded to other proposal}) &= \frac{3}{4} \times 35 = 26.5 \text{ points} \end{aligned}$$

- e. Required Attachments. For the proposal to be considered responsive, all required Attachments 1 through 8 must be completed and included with the proposal by the dates and times shown in Key Action Dates (Section C, Item 1).

### 3. Submission of Proposals

- a. Proposals should provide straightforward and concise descriptions of the firm's ability to satisfy the requirements of this RFP. The proposal must be complete and accurate. Omissions, inaccuracies or misstatements may be cause for rejection of a proposal.
- b. All proposals must be submitted under **sealed** cover and sent to CAEATFA by the date and time shown in Key Action Dates (Section C, Item 1). Proposals received after this date and time will not be considered.
- c. A minimum of one original and three (3) copies of the proposal must be submitted.
- d. The original proposal must be marked "**ORIGINAL COPY.**" All documents contained in the original proposal package must have original signatures and must be signed by a person who is authorized to bind the firm. All additional proposal sets may contain photocopies of the original package.
- e. The proposal envelopes must be plainly marked with the RFP number and title, the firm name and address; marked with "DO NOT OPEN" and mailed or delivered to the address shown in the following example:

Subject – Request for Proposals – “**PACE Trustee Services**”  
**RFP# CAEATFA10-16**

California Alternative Energy and  
Advanced Transportation Financing Authority  
Attn: Dallas Aicega  
915 Capitol Mall  
Sacramento, CA 95814

**DO NOT OPEN**

- f. If the proposal is made under a fictitious name or business title, the actual legal name of the firm must be provided.
- g. Proposals not submitted under sealed cover and marked as indicated may be rejected.
- h. All proposals must include the documents identified in Section E: Required Attachments. Proposals not including the required attachments shall be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements.
- i. Proposals must be submitted for the performance of all the services described herein. Any deviation from the work specifications will not be considered and will cause a proposal to be rejected.
- j. A proposal may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. CAEATFA may reject any or all proposals and may waive any immaterial deviation in a proposal. CAEATFA's waiver of an immaterial deviation shall in no way modify the proposal document nor excuse the proposer from full compliance with all requirements if awarded the contract.
- k. Costs for developing proposals and in anticipation of award of the Agreement are entirely the responsibility of the proposer and shall not be charged to CAEATFA or the State of California.
- l. An individual who is authorized to bind the proposing firm contractually shall sign the Proposal/Proposer Certification Sheet (Attachment 2). The signature must indicate the title or position that the individual holds in the firm. An unsigned proposal may be rejected.
- m. A firm may modify a proposal after its submission by withdrawing its original proposal and resubmitting a new proposal prior to the proposal submission deadline as set forth in the Key Action Dates. The submission of a new proposal must comply with requirements of this section. Proposal modifications offered in any other manner, oral or written, will not be considered.
- n. A firm may withdraw its proposal by submitting a written withdrawal request, signed by the proposer or an authorized agent, to CAEATFA at the address identified in Item 3.f. above. A firm may thereafter submit a new proposal prior to the proposal submission deadline. Proposals may not be withdrawn without cause after the proposal submission deadline.
- o. CAEATFA may modify the RFP prior to the date fixed for submission of proposals by the issuance of an addendum to all parties who received an RFP package.
- p. CAEATFA reserves the right to reject all proposals. The agency is not required to award an agreement.

- q. Before submitting a response to this solicitation, firms should review such response, correct all errors and confirm compliance with the RFP requirements.
- r. Where applicable, the firm should carefully examine work sites and specifications. No additions or increases to the Contract amount will be made due to a lack of careful examination of work sites and specifications.
- s. More than one proposal from an individual, firm, partnership, corporation or association, under the same or different names, will not be considered.
- t. CAEATFA will not accept alternate contract language from the firm. A proposal with such language will be considered a counter-proposal and will be rejected. The General Terms and Conditions (GTC-610) are not negotiable.
- u. No oral understanding or agreement shall be binding upon either party.
- v. Conflict of Interest: The bidder/Trustee needs to be aware of the provisions regarding current or former state employees. If a Trustee has any questions on the status of any person rendering services or involved with the Contract, the CAEATFA must be contacted immediately for clarification. (See Attachment 7, Contractor Certification Clauses (CCC-307)).

#### **4. Evaluation Process**

- a. Each proposal will be date- and time-stamped as it is received; additionally, it will be verified that each proposal arrives properly sealed. Late proposals will not be accepted. Proposals shall remain confidential until the review process begins. At the time of proposal opening, each proposal shall be checked for the presence or absence of required information in conformance with the submission requirements of this RFP.
- b. CAEATFA staff shall evaluate each proposal to determine how responsive the firm is to the specific requirements contained in this RFP. Each proposal will be examined for the presence of required information as specified in the submission requirements of this RFP. The submission requirements are mandatory and failure to fully comply may be deemed grounds for automatic rejection.
- c. It is the firm's responsibility to provide sufficient information in the proposal to permit CAEATFA staff to make an accurate assessment of the firm's ability to provide the services needed.
- d. If during the evaluation process CAEATFA staff is unable to assure itself of the firm's ability to perform under the contract, (if contract is awarded), CAEATFA staff has the option of requesting from the firm any information deemed necessary to determine the firm's qualifications. The firm shall be notified if such information is required, and shall be permitted five working days to submit the requested information.
- e. If the information submitted by the firm is insufficient to satisfy CAEATFA staff as to the firm's suitability, CAEATFA staff may ask for additional information or reject the statement. The Authority's determination of the firm's qualifications shall be final.
- f. Proposals that contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the proposer, may be rejected.
- g. CAEATFA shall evaluate only those proposals from firms meeting the Minimum Qualifications for Proposers as defined in Section B as well as the Proposal Requirements in Section C.

- h. At the time of proposal opening, each proposal will be checked for the presence or absence of required information in conformance with the submission requirements of this RFP.
- i. Award, if made, will be to the highest-scored responsive proposal.
- j. The proposals that meet the Minimum Qualifications for Proposers in Section B and the Proposal Requirements in Section C will be evaluated and scored according to the criteria indicated below. A minimum of 85 points must be achieved to be considered responsive (a responsive proposal is one which meets or exceeds the requirements stated in this RFP). The selection will be made by an evaluation committee of CAEATFA on the basis of the following weighted factors (maximum points available for each criterion are noted).

<b>Rating/Scoring Criteria</b>	<b>Maximum Possible Points</b>
i. <u>Qualifications of the Firm</u> . CAEATFA will evaluate the firm’s overall experience demonstrating its ability to successfully complete the Scope of Services as described in Section A.3, including trustee depository experience.	35 Points
ii. <u>Qualifications of Key Personnel</u> . CAEATFA will evaluate the individuals to be assigned to the contract on the basis of background and experience in related work including experience as a trustee and with similar types of programs.	30 Points
iii. <u>Fee Schedule (Cost)</u> . CAEATFA will evaluate the actual fees proposed, including the reasonableness of the composite annual rates and cost detail (given value of services to be obtained), and cost effectiveness (given experience and qualifications of firm and its personnel).	35 Points
<b>Maximum Total Possible Points</b>	<b>100 Points</b>

As part of its final evaluation process, CAEATFA may request oral presentations. If this option is exercised, CAEATFA shall provide the firms with at least a 72-hour notice. Presenters from the firm(s) must include the personnel who shall have primary responsibility for the account(s).

CAEATFA reserves the right to:

- Request an interview with, and additional information from, firms prior to final selection of the Contractor.
- Select the firm that, in CAEATFA’s judgment, shall best meet the needs of CAEATFA and the PACE Loss Reserve Program, regardless of differences in estimated costs between firms.
- Consider information about a firm in addition to the information submitted in the proposal or interview.

## 5. Award and Protest

- a. Notice of the proposed award(s) shall be posted in a public place in the office of CAEATFA, 915 Capitol Mall, Sacramento, CA 95814 and on the following Internet site for five (5) working days prior to awarding the Contract(s): <http://www.treasurer.ca.gov/CAEATFA>.
- b. If any firm, prior to the award of the Contract(s), files a protest with CAEATFA and the Department of General Services, Office of Legal Services, 707 Third Street, 7th Floor, West Sacramento, CA 95605, on the grounds that the (protesting) firm would have been awarded a contract had CAEATFA correctly applied the evaluation standard in the RFP, or had CAEATFA followed the evaluation and scoring methods in the RFP, the Contract(s) shall not be awarded until either the protest has been withdrawn or the Department of General Services has decided the matter. It is suggested that the firm submit any protest by certified or registered mail.
- c. Within five (5) days after filing the initial protest, the protesting firm shall file with the Department of General Services, Office of Legal Services and CAEATFA a full and complete written statement specifying the grounds for the protest. It is suggested that the firm submit this complete written statement by certified or registered mail.
- d. Upon award of the Contract(s), the firm must complete and submit to the awarding agency the Payee Data Record (STD 204, made part of the RFP as Attachment 6), to determine if the firm is subject to state income tax withholding pursuant to California Revenue and Taxation Code Sections 18662 and 26131. No payment shall be made unless a completed STD 204 has been returned to CAEATFA.
- e. Upon resolution of the protest and award of the Contract, Trustee must sign and submit to the awarding agency page one (1) of the Contractor Certification Clauses (CCC 307), included as Attachment 7.

## 6. Disposition of Proposals

- a. Upon proposal opening, all documents submitted in response to this RFP will become the property of CAEATFA and the State of California, and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public. The State cannot prevent the disclosure of public documents. However, the contents of all proposals, correspondence, agenda, memoranda, working papers, or any other medium which discloses any aspect of a proposer's proposal shall be held in the strictest confidence until the letter of Intent to Award Contract is posted.

## 7. Agreement Execution and Performance

- a. Performance shall start not later than thirty (30) days after the express date set by CAEATFA and the selected firm, after all approvals have been obtained and the Agreement is fully executed. Should the firm fail to commence work at the agreed-upon time, CAEATFA, upon five (5) days' written notice to the firm, reserves the right to terminate the Agreement. In addition, the firm shall be liable to CAEATFA for the difference between the firm's proposal price and the actual cost of performing work by another contractor.
- b. All performance under the Agreement shall be completed on or before the termination date of the Agreement.

## **D. PREFERENCE PROGRAMS**

### **1. Small Business or Microbusiness Preference ([www.pd.dgs.ca.gov/smbus/default.htm](http://www.pd.dgs.ca.gov/smbus/default.htm))**

A five percent (5%) preference will be applied to certified small business firms submitting proposals. To obtain the preference, firms must be certified as a small business at the time the bid is submitted. The firm MUST include an updated copy of its Small Business Certificate to obtain the preference. The 5% preference is issued only for computation purposes to arrive at the successful firms and does not alter the amounts of the actual bids. Once each bid has been scored, if the highest responsible firm is not a certified small business or microbusiness, 5% of the highest scoring bid is added to the total "earned" points for each bid submitted by a certified small business. These final numbers, with the 5% included, are then used to determine the highest scoring bid.

Questions regarding the small business certification or preference approval should be directed to the Office of Small Business & DVBE Services ("OSDS") at (916) 375-4940 or can be found at the website listed above.

### **2. Non-Small Business Preference ([www.pd.dgs.ca.gov/smbus/default.htm](http://www.pd.dgs.ca.gov/smbus/default.htm))**

A five percent (5%) bid preference is available to a non-small business claiming twenty-five percent (25%) California certified small business subcontractor participation. If claiming the non-small business subcontractor preference, the bid response must include a list of the small business(es) with which the firm commits to subcontract in an amount of at least 25% of the net bid price with one or more California certified small businesses. Each listed certified small business must perform a "commercially useful function" in the performance of the contract as defined in Government Code Section 14837(d)(4).

The required list of California certified small business subcontractors must be attached to the bid response and must include the following: 1) subcontractor name, 2) address, 3) phone number, 4) a description of the work to be performed and/or products supplied; and 5) the dollar amount or percentage of the net bid price (as specified in the solicitation) per subcontractor.

Firms claiming the 5% preference must commit to subcontract at least 25% of the net bid price with one or more California certified small businesses. Completed certification applications and required support documents must be submitted to the OSDS no later than 5:00 p.m. on the bid due date, and the OSDS must be able to approve the application as submitted. Questions regarding certification should be directed to the OSDS at (916) 375-4940.

The preference to a non-small business firm that commits to small business or microbusiness subcontractor participation of 25% of its net bid price shall be 5% of the highest responsive, responsible firm's total score. A non-small business, which qualifies for this preference, may not take an award away from a certified small business.

### **3. Disabled Veteran Business Enterprise (DVBE) Incentive Program – OPTIONAL**

This solicitation provides an incentive for DVBE participation. The Department of General Services ("DGS") established a DVBE incentive pursuant to Senate Bill 115, Chaptered October 3, 2005 and the military and Veterans Code section 999.5(a). The regulations apply to all competitive solicitations for public works, services, goods, and information technology goods and services posted or released after October 9, 2007. The DVBE incentive is required in solicitations that include DVBE program requirements and may be offered in other competitive solicitations. Department of General Services' policy implements this program by rewarding prime bidders for

increased DVBE participation: the more DVBE participation, the greater the incentive. This incentive program helps State agencies to meet their annual DVBE participation goals.

Attachment 12 outlines the DVBE Incentive Program. Bidders seeking the DVBE incentive must submit a completed Bidder Declaration (GSPD-05-105) that demonstrates DVBE participation and qualification for a DVBE incentive, with bid submittal. The DVBE Incentive participation is *optional* and at the discretion of the proposing firm.

**NOTE:** For this solicitation, the Incentive application is based on the High Score Method and shall not exceed five percent (5%), nor be less than three percent (3%) of the total score (see table in Attachment 12).

#### **E. REQUIRED ATTACHMENTS**

For the proposal to be considered responsive, all required attachments listed on the Required Attachment Check List (Attachment 1) must be completed and included with the proposal by the dates and times shown in Key Action Dates (Section C, Item 1).

## ATTACHMENT 1

### REQUIRED ATTACHMENT CHECK LIST

A complete proposal or proposal package will consist of the items identified below. Complete this checklist to confirm the items in your proposal. Place a check mark or "X" next to each item that you are submitting to the State. For your proposal to be responsive, all required attachments must be returned. This checklist should be returned with your proposal package also.

<u>Attachment #</u>	<u>Attachment Name/Description</u>
_____	Attachment 1 – Required Attachment Check List
_____	Attachment 2 – Proposal/Proposer Certification Sheet
_____	Attachment 3 – Key Personnel and Experience
_____	Attachment 4 – Proposer References
_____	Attachment 5 – Cost Proposal Work Sheet
_____	Attachment 6 – Payee Data Record (STD 204)
_____	Attachment 7 – Contractor's Certification Clauses (CCC)
_____	Attachment 8 – Darfur Contracting Act
_____	Attachment 9 – California Civil Rights Laws Certification
_____	Attachment 10 – Small Business or Microbusiness Preference (if applicable)
_____	Attachment 11 – Non-Small Business Preference (if applicable)
_____	Attachment 12 – California Disabled Veteran Business Enterprise (DVBE) Program Participation Instructions
_____	Attachment 13 – Bidder Declaration (GSPD-05-105)

\* DVBE PARTICIPATION COMMITMENT. Bidders seeking the DVBE incentive must submit a completed Bidder Declaration (GSPD-05-105) that demonstrates DVBE participation and qualification for a DVBE incentive.

**ATTACHMENT 2**

**PROPOSAL/PROPOSER CERTIFICATION SHEET**

This Proposal/Proposer Certification Sheet must be signed and returned along with all the "required attachments" as an entire package in duplicate with original signatures. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions.

**Do not return the RFP nor the "Sample Agreement" at the end of this RFP.**

- A. Place all required attachments behind this certification sheet.
- B. I have read and understand the DVBE Participation requirements and have included documentation demonstrating that I have met the participation goals of 3% or more.
- C. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

**An Unsigned Proposal/Proposer Certification Sheet  
May Be Cause For Rejection**

1. Company Name	2. Telephone Number (   )	2a. Fax Number (   )
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)	8. California Corporation No.	
9. Indicate applicable license and/or certification information:		
10. Proposer's Name (Print)	11. Title	
12. <b>Signature</b>	13. Date	
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:		
a. California Small Business Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number: _____	b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below: _____	
<b>NOTE:</b> Proof of Certification is required to be included if either of the above items is checked "Yes" and will be verified.		
Date application was submitted to OSBCR, if an application is pending:		

### Completion Instructions for Proposal/Proposer Certification Sheet

Complete the numbered items on the Proposal/Proposer Certification Sheet by following the instructions below.

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

**ATTACHMENT 3**

**KEY PERSONNEL & EXPERIENCE**

<b>Name of Firm:</b>	
<b>Identify Key personnel (include partners, associates, etc.) who will be directly involved in providing the services.</b>	
<b>Name:</b>	<b>Percent of Effort %</b>
<b>Title:</b>	<b>Office Location:</b>
<b>Phone Number:</b>	<b>Email:</b>
<b>Role:</b>	
<b>How Long in Current Position?</b>	<b>How Long Employed in Current Firm?</b>
<b>Experience:</b>	

<b>Name of Firm:</b>	
<b>Identify Key personnel (include partners, associates, etc.) who will be directly involved in providing the services.</b>	
<b>Name:</b>	<b>Percent of Effort %</b>
<b>Title:</b>	<b>Office Location:</b>
<b>Phone Number:</b>	<b>Email:</b>
<b>Role:</b>	
<b>How Long in Current Position?</b>	<b>How Long Employed in Current Firm?</b>
<b>Experience:</b>	

Include additional pages as needed

**ATTACHMENT 4**

**PROPOSER REFERENCES**

Submission of this attachment is mandatory. Failure to complete and return this attachment with your proposal will cause your proposal to be rejected and deemed nonresponsive.

List below three references for services performed within the last five years, which are similar to the scope of work to be performed in this contract. If three references cannot be provided, please explain why on an attached sheet of paper.

<b>REFERENCE 1</b>			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service	
Brief Description of Service Provided			

<b>REFERENCE 2</b>			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service	
Brief Description of Service Provided			

<b>REFERENCE 3</b>			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service	
Brief Description of Service Provided			

**ATTACHMENT 5**

**COST PROPOSAL WORKSHEET**

**Scenario**

*(This scenario is only given for purposes of evaluating the fees portion of your proposal. Actual transaction volume under the Agreement may vary considerably depending on demand for the Program, actual claim rates and economic conditions; however, proposals submitted with fee schedules not in compliance with these requirements shall be rejected):*

- Average claim amount of \$5,000.00;
- Forty-five (45) claims in the first year;
- Sixty-five (65) claims in year two;
- Eighty-five (85) claims in year three;

Considering the Program volume estimates in the scenario above, please provide your firm's annual fee schedule for the tasks listed in (a) – (d) below:

- (a) establishment and maintenance of the Program Fund, including potential transfer to new trustee at the end of the contract term;
- (b) funding claim payments;
- (c) semi-annual fee for trust administration; and
- (d) outline of other reimbursable expenses, if applicable.

**FEE SCHEDULE:**

<u>Fees (if applicable):</u>	<u>Per Transaction</u>	<u>Annual</u>
Account Setup (and Transfer) Fees		
Semi-Annual Trust Administration		
Draw Fees		
<u>Administration (if applicable):</u>		
Reimbursement Tracking and Notices		
Monthly Claim Activity Summary		
<u>Other Expenses (describe):</u>		
	<b>TOTAL FEES:</b>	

**ATTACHMENT 6**

**PAYEE DATA RECORD (STD. 204)**

<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf>

**ATTACHMENT 7**

**CONTRACTOR'S CERTIFICATION CLAUSES**

<http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>

**CCC 04/2017**

**CERTIFICATION**

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

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE**: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS**: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

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

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or 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.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. **GENDER IDENTITY**: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

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

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

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

Current State Employees (Pub. Contract Code §10410):

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

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

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

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

2. **LABOR CODE/WORKERS' COMPENSATION**: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. **AMERICANS WITH DISABILITIES ACT**: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

**ATTACHMENT 8**

**DARFUR CONTRACTING ACT**

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

Therefore, to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

<i>Company/Vendor Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Initialing (for Options 1 or 2)</i>	

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

**OR**

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

**OR**

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

**CERTIFICATION For # 3.**

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

<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>

**ATTACHMENT 9**

**CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION**

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

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

**CERTIFICATION**

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

## ATTACHMENT 10

### **SMALL BUSINESS OR MICROBUSINESS PREFERENCE**

(If Applicable)

Small Business or Microbusiness Preference – [www.pd.dgs.ca.gov/smbus/default.htm](http://www.pd.dgs.ca.gov/smbus/default.htm)

A five percent (5%) preference will be applied to certified small business firms submitting proposals. To obtain the preference, firms must be certified as a small business at the time the bid is submitted. The firm MUST include an updated copy of their Small Business Certificate to obtain the preference. The 5% preference is issued only for computation purposes to arrive at the successful firms and does not alter the amounts of the actual bids. Once each bid has been scored, if the highest responsible firm is not a certified small business or microbusiness, 5% of the highest scoring bid is added to the total “earned” points for each bid submitted by a certified small business. These final numbers, with the 5% included, are then used to determine the highest scoring bid.

Questions regarding the small business certification or preference approval should be directed to the Office of Small Business & DVBE Services (OSDS) at (916) 375-4940 or can be found at the website listed above.

## ATTACHMENT 11

### **NON-SMALL BUSINESS PREFERENCE**

(If Applicable)

Non-Small Business Preference – [www.pd.dgs.ca.gov/smbus/default.htm](http://www.pd.dgs.ca.gov/smbus/default.htm)

A five percent (5%) bid preference is available to a non-small business claiming twenty-five percent (25%) California certified small business subcontractor participation. If claiming the non-small business subcontractor preference, the bid response must include a list of the small business(es) with which the firm commits to subcontract in an amount of at least 25% of the net bid price with one or more California certified small businesses. Each listed certified small business must perform a "commercially useful function" in the performance of the contract as defined in Government Code Section 14837(d)(4).

The required list of California certified small business subcontractors must be attached to the bid response and must include the following: 1) subcontractor name, 2) address, 3) phone number, 4) a description of the work to be performed and/or products supplied; and 5) the dollar amount or percentage of the net bid price (as specified in the solicitation) per subcontractor.

Firms claiming the 5% preference must commit to subcontract at least 25% of the net bid price with one or more California certified small businesses. Completed certification applications and required support documents must be submitted to the OSDS no later than 5:00 p.m. on the bid due date, and the OSDS must be able to approve the application as submitted. Questions regarding certification should be directed to the OSDS at (916) 375-4940.

The preference to a non-small business firm that commits to small business or microbusiness subcontractor participation of 25% of its net bid price shall be 5% of either the lowest, responsive, responsible firm's price or the highest responsive, responsible firm's total score. A non-small business, which qualifies for this preference, may not take an award away from a certified small business

ATTACHMENT 12

**CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE (DVBE)  
PROGRAM PARTICIPATION INSTRUCTIONS**

**DVBE PARTICIPATION REQUIREMENT.** The Disabled Veteran Business Enterprise (DVBE) Participation Goal Program for State contracts is established in Public Contract Code (PCC) section 10115 et seq., Military and Veterans Code (MVC) section 999 et seq., and California Code of Regulations (CCR), title 2, section 1896.60 et seq. **This solicitation DOES NOT include a minimum DVBE participation requirement. DVBE participation is NOT required in the bid or proposal. However, a DVBE incentive will be applied as provided below.**

**DVBE INCENTIVE.** The State will apply a DVBE incentive for responsive bids or proposals (herein “bid” or “bids”) from responsible bidders that propose DVBE participation. The DVBE incentive will vary in relation to the percentage of confirmed DVBE participation. The following percentages shall apply.

<b>Confirmed DVBE Participation of</b>	<b>DVBE Incentive</b>
5% and above	5%
4% to 4.99% inclusive	4%
3% to 3.99% inclusive	3%
2% to 2.99% inclusive	2%
1% to 1.99% inclusive	1%

As applicable: (1) Awards based on low price – The DVBE incentive is applied by reducing the bid price by the amount of DVBE incentive as computed from the lowest responsive bid price submitted by a responsible bidder. The DVBE incentive is for evaluation purposes only. Application of the DVBE incentive shall not displace an award to a small business with a non-small business.

(2) Awards based on high score – The DVBE incentive is a percentage of the total possible available points, not including points for socioeconomic incentives or preferences. The DVBE incentive points are included in the sum of non-cost points. The DVBE incentive points cannot be used to achieve any applicable minimum point requirements.

**DVBE PARTICIPATION COMMITMENT. Bidders seeking the DVBE incentive must submit a completed Bidder Declaration, GSPD-05-105, that demonstrates DVBE participation and qualification for a DVBE incentive.**

DVBE participation information submitted by the intended awardee will be verified by the State. If evidence of an alleged violation is found during the verification process, the State or the Department of General Services, Office of Small Business and DVBE Services (OSDS) shall initiate an investigation in accordance with PCC section 10115 et seq., MVC section 999 et seq., and CCR, title 2, section 1896.60 et seq. Contractors found to be in violation of certain provisions may be subject to loss of certification, contract termination, and/or other penalties.

**Only State of California OSDS certified DVBEs** that perform a commercially useful function relevant to this solicitation may be used for the DVBE incentive and to comply with the DVBE Participation Goal Program. Please see MVC section 999(b) and CCR, title 2, section 1896.62(l) regarding the performance of a commercially useful function. Bidders are to verify each DVBE subcontractor’s certification with OSDS to ensure DVBE eligibility. Bidders cannot demonstrate DVBE incentive eligibility and DVBE Participation Goal Program compliance by performing a good faith effort.

At the State’s option prior to contract award, written confirmation from each DVBE subcontractor identified on the Bidder Declaration, GSPD-05-105, must be provided. As directed by the State, the written confirmation must be signed by the bidder and/or the DVBE subcontractor(s). The written confirmation shall include information as may be requested by the State, such as DVBE scope of work, work to be performed by the DVBE, term of intended subcontract with the DVBE, anticipated dates the DVBE will perform required work, rate and conditions of payment, and total amount to be paid to the DVBE. The State may obtain any additional documentation or information to verify compliance.

## RESOURCES AND INFORMATION\*

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**U.S. Small Business Administration:**

Central Contractor Registration on-line database  
[www.ccr.gov](http://www.ccr.gov)

**FOR:**

Service-Disabled Veteran-Owned  
Businesses in California

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**Local Organizations:**

DVBE local contacts  
[www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)

**FOR:**

List of Potential DVBE Subcontractors

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**Department of General Services, Procurement Division  
(DGS-PD) eProcurement:**

Website: [www.eprocure.dgs.ca.gov](http://www.eprocure.dgs.ca.gov)  
Phone: (916) 375-2000  
Email: [eprocure@dgs.ca.gov](mailto:eprocure@dgs.ca.gov)

**FOR:**

- SB/DVBE Search
- CSCR Advertisements
- Training Modules

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**DGS-PD Office of Small Business and DVBE Services  
(OSDS):**

707 Third Street, Room 1-400, West Sacramento, CA 95605  
Website: [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)  
OSDS Receptionist: (916) 375-4940  
PD Receptionist: (800) 559-5529  
Fax: (916) 375-4950  
Email: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)

**FOR:**

- Directory of OSDS Certified DVBEs
- Certification Applications
- Certification Information
- Certification Status, Concerns
- General DVBE Program Information
- DVBE Business Utilization Plan
- SB/DVBE Advocates
- Lists of Trade and Focus Publications

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**Commercially Useful Function Definition**

Military and Veterans Code section 999(b)  
California Code of Regulations, title 2, section 1896.62(/)

\*Contact information and available resources may be subject to change by the respective administration, department, division, or office. DVBEs must be certified by OSDS.

**ATTACHMENT 13**

**BIDDER DECLARATION**

<http://www.documents.dgs.ca.gov/pd/poliproc/MASTEr-BidDeclar08-09.pdf>

AGREEMENT NUMBER <b>CAEATFA10-16</b>
REGISTRATION NUMBER

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

STATE AGENCY'S NAME  
 California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA)

CONTRACTOR'S NAME  
**(To be determined)**

2. The term of this Agreement is: June 12, 2017 (or upon DGS approval) through June 11, 2019 (or upon DGS approval)

3. The maximum of this Agreement is: **\$ 200,000.00**  
 Two Hundred Thousand Dollars and Zero Cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Services	3 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit C* – General Terms and Conditions	GTC*
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	6 pages
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	
Exhibit E – Additional Provisions	1 page

RFP CAEATFA10-16 and Contractor's response thereto are hereby incorporated by reference and made a part of this Agreement.

*Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>*

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>(To be determined)</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
<b>STATE OF CALIFORNIA</b>		<input type="checkbox"/> Exempt per:
AGENCY NAME California Alternative Energy and Advanced Transportation Financing Authority		
BY (Authorized Signature)		
PRINTED NAME AND TITLE OF PERSON SIGNING Deana J. Carrillo, Executive Director		
ADDRESS 915 Capitol Mall, Sacramento, CA 95814		

**EXHIBIT A**  
**(Standard Agreement)**

**SCOPE OF SERVICES**

**1. Scope of Services**

Under the general direction of the Executive Director of CAEATFA, the Contractor agrees to provide services as described below:

a. Establishing the Trust Account:

- i. The Trustee will establish, maintain and hold a separate fund designated as the PACE Loss Reserve Trust Account (the "Program Fund"). Upon establishment of the Program Fund, CAEATFA will deposit such funds as determined by its Executive Director or designee.
- ii. Any and all established accounts will be interest-bearing demand accounts unless the Trustee is directed by CAEATFA to place funds in another account type, and shall not require any fees or costs to be paid by the Trustee or CAEATFA.
- iii. Upon the written direction of the Authority to the Trustee, the monies in the Program Fund will be invested by the Trustee in any investment permitted by Government Code Section 16430.
- iv. The Trustee will be authorized and directed in writing by CAEATFA's Executive Director or designee to transfer, hold, invest and disburse monies in the Program Fund, and future accounts.

b. Funding PACE Loss Reserve Claim Payments:

- i. CAEATFA will submit a written Request for Disbursement ("Requisition") to the Trustee. Each Requisition must contain the following information:
  - (a) The name of the enrolled PACE program;
  - (b) The name and address of the entity to which the payment is due;
  - (c) The purpose for which such payment is to be made;
  - (d) The amount to be paid;
  - (e) The date by which such payment is due; and
  - (f) Certification that the payment directed therein has been properly incurred and is a proper charge against the claim payment.

Each Requisition will be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Upon receipt of a Requisition signed by CAEATFA, the Trustee shall pay the amount set forth therein as directed by the terms thereof.

- ii. The Trustee will disburse the claim payment from the Program Fund. For each claim payment, the Trustee will track activity for reporting purposes.

c. Maintenance of Account(s):

- i. The Trustee will hold, maintain and monitor the Program Fund; perform various account related activities; provide recordkeeping information on all transactions and claim activity; and provide monthly statements (by the 15<sup>th</sup> day of the following month) to CAEATFA.
- ii. The monies deposited in the Program Fund held by the Trustee are the property of CAEATFA, but held for the benefit of the enrolled PACE programs.
- iii. CAEATFA may provide written direction to the Trustee to remit any monies in the Program Fund to CAEATFA.

**EXHIBIT A  
(Standard Agreement)**

- iv. At such time as CAEATFA in its discretion determines to terminate its role in the PACE Loss Reserve Program, the Trustee will be authorized and directed in writing by CAEATFA's Executive Director or designee to remit any money remaining in the Program Fund to CAEATFA.
  - v. The Trustee will meet, as needed, with CAEATFA and its staff at a location to be determined by CAEATFA staff.
  - vi. In all respects, the Trustee will represent the best interests of CAEATFA and the State of California in all transactions and proceedings.
- d. Reporting and Other Requirements:
- i. Monthly Account Statements. The Trustee will provide monthly bank statements (by the 15<sup>th</sup> day of the following month) to CAEATFA for the account it maintains in association with the PACE Loss Reserve. These statements will include the account balance and any interest earned, as well as all transaction activities associated with the account during the statement period, and any changes or transfers related to the account.
  - ii. Monthly Claim Activity Summary. Through the collection of data from submitted claims, the Trustee will provide, on a monthly basis (by the 15<sup>th</sup> day of the following month), the following data for claims that includes:
    - (a) An accounting of the Program Fund;
    - (b) The name of the enrolled PACE program;
    - (c) The qualified claim number;
    - (d) The date the claim was paid; and
    - (e) The amount of claim paid.
  - iii. On-Demand Electronic Account Viewing. The Trustee will provide designated CAEATFA staff with on-demand electronic viewing access to the Program Fund and any other account established on behalf of CAEATFA.

The Trustee will perform such other duties or activities related to the specific duties listed above as may be specifically requested in writing by CAEATFA in connection with the Program, including on CAEATFA's behalf in communications with enrolled PACE programs.

**EXHIBIT A  
(Standard Agreement)**

**2. The project representatives during the term of this Agreement will be:**

<b>State Agency:</b> California Alternative Energy And Advanced Transportation Financing Authority (CAEATFA)	<b>Contractor:</b>
Name: Deana J. Carrillo, Executive Director	Name:
Address: 915 Capitol Mall, Sacramento, California 95814	Address:
Phone: (916) 653-8157	Phone:
Fax: (916) 657-4821	Fax:
Email: <a href="mailto:dcarrillo@treasurer.ca.gov">dcarrillo@treasurer.ca.gov</a>	Email:

**Direct all inquiries to:**

<b>State Agency:</b> California Alternative Energy And Advanced Transportation Financing Authority (CAEATFA)	<b>Contractor:</b>
Section/Unit: CAEATFA	Section/Unit:
Attention: Dallas Aicega	Attention:
Address: 915 Capitol Mall, Sacramento, California 95814	Address:
Phone: (916) 653-3303	Phone:
Fax: (916) 657-4821	Fax:
Email: <a href="mailto:daicega@treasurer.ca.gov">daicega@treasurer.ca.gov</a>	Email:

**EXHIBIT B  
(Standard Agreement)**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Invoicing and Payment**

- a. For services satisfactorily rendered, and upon receipt and approval of the invoices, in consideration of the services described in Exhibit A, Scope of Services, CAEATFA agrees to pay the Contractor based on the Rate Schedule provided in the Contractor's Proposal, which is attached hereto and made a part of this Agreement. The State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified.
  - i. One (1) CAEATFA PACE Loss Reserve Trust Account
  - ii. Semi-Annual Administrative Fee
  - iii. Draw Fees
  - iv. Reimbursement tracking and notices
  - v. Monthly Claim Activity Summary
- b. Invoices shall be provided to CAEATFA **semi-annually and in arrears**, shall include Agreement Number CAEATFA10-16 and the specific period (month, day and year) covered by the invoice, and shall be sent to:

Deana J. Carrillo, Executive Director  
California Alternative Energy and Advanced Transportation  
Financing Authority (CAEATFA)  
915 Capitol Mall  
Sacramento, California 95814

- c. Any change in the professional staff or subcontractors, whether by substitution or addition of staff, must be approved in writing in advance by CAEATFA Executive Director and must be accompanied by a resume and proposed billing rate, which rate shall not be greater than the rate for comparable staff identified in the billing rates.
- d. All travel must be pre-approved by the Executive Director. Travel and transportation expenses shall not exceed the rates payable to State employees. Other necessary expenses not listed above will be reimbursed if approved in advance by the Executive Director. Send invoices to:

Deana J. Carrillo, Executive Director  
California Alternative Energy and Advanced Transportation  
Financing Authority (CAEATFA)  
915 Capitol Mall  
Sacramento, California 95814

- e. The maximum amount of compensation to Contractor under this Agreement shall not exceed **two hundred thousand dollars (\$200,000.00)** for the entire term of this Agreement.

**2. Budget Contingency Clause**

- a. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no

**EXHIBIT B  
(Standard Agreement)**

liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

- b. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

**3. Prompt Payment Clause**

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

SAMPLE



**EXHIBIT C  
(Standard Agreement)**

**GENERAL TERMS AND CONDITIONS**

Exhibit C to this Agreement, the General Terms and Conditions (GTC), is hereby incorporated by reference and made part of this Agreement as if attached hereto. The General Terms and Conditions may be viewed and downloaded at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

SAMPLE

**EXHIBIT D**  
**(Standard Agreement)**

**SPECIAL TERMS AND CONDITIONS**

**1. Excise Tax**

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

**2. Settlement of Disputes**

In the event of a dispute, Contractor shall file a "Notice of Dispute" with a Deputy Treasurer of the State Treasurer's Office within ten (10) days of discovery of the problem. Within ten (10) days, the Deputy Treasurer shall meet with the representatives of Contractor and the State identified in Paragraph 2 of Exhibit A for purposes of resolving the dispute. The decision of the Deputy Treasurer shall be final.

In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of any bid proposal.

**3. Evaluation of Contractor**

Pursuant to Public Contract Code sections 10367 and 10369 within sixty (60) days after the completion of this Agreement, the State shall complete a written evaluation of Contractor's performance under this Agreement. If this Agreement is a contract for consultant services and if Contractor did not satisfactorily perform the work, a copy of the evaluation will be sent to the Department of General Services (DGS), Office of Legal Services, and to the Contractor within fifteen (15) working days of the completion of the evaluation in accordance with Public Contract Code section 10371.

**4. No Agency Liability**

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

**5. Potential Subcontractors**

Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the obligation of the State to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**EXHIBIT D**  
**(Standard Agreement)**

**6. Force Majeure**

Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

**7. Waivers**

No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

**8. Incorporation of Amendments to Applicable Laws**

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

**9. Confidentiality**

All financial, statistical, personal, technical and other data and information relating to the operations of the State which are designated confidential by the State and become available to Contractor shall be protected by Contractor from unauthorized use and disclosure.

**10. Titles/Section Headings**

Titles and headings are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

**11. Choice of Law**

Notwithstanding Paragraph 14 of Exhibit C (General Terms and Conditions), this Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any conflict of laws provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder, including any action to compel arbitration or to enforce any award or judgment rendered thereby, shall be brought in state court sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

**12. Notices**

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder, Contractor and the State have designated in Paragraph 2 of Exhibit A specific staff representatives for the purpose of communication between the parties. Any notice or other written communication required or which may be given hereunder shall be deemed given when delivered personally, or by mail three (3) days after the date of mailing, unless by express mail then upon the date of confirmed receipt, to the representatives named in Paragraph 2 of Exhibit A.

**EXHIBIT D**  
**(Standard Agreement)**

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

**13. Permits and Licenses**

Contractor shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county laws, rules or regulations affecting services under this Agreement. Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement.

**14. Books and Records**

Contractor shall keep accurate books and records connected with the performance of this Agreement for a period of at least three (3) years. Contractor shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location and shall be available for inspection and copying by the State and its representatives at any time.

**15. Key Personnel**

- a. A resume for each member of Contractor's staff who will exercise a significant administrative, policy, or consulting role under this Agreement is attached to this Agreement as Attachment 1 to Exhibit D. These members of Contractor's staff shall be hereafter referred to (both individually and collectively) as "Key Personnel."
- b. Contractor shall not substitute, replace or reassign Key Personnel without the prior approval of the State and an amendment to this Agreement.
- c. This Agreement may be terminated immediately, in the sole discretion of the State and upon written notice from the State to Contractor, because of any change in or departure of any of the Key Personnel.

**16. Changes in Control, Organization or Key Personnel**

Contractor shall promptly, and in any case within five (5) days, notify the State in writing: (i) if any of Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement; (ii) of any change in Contractor's staff who exercises a significant administrative, policy, or consulting role under this Agreement, including without limitation any Key Personnel; (iii) of any change in the majority ownership, control, or business structure of Contractor; or (iv) of any other material change in Contractor's business, partnership or corporate organization. All written notices from Contractor under this provision shall contain sufficient information to permit the State to evaluate the changes within Contractor's staff or organization under the same criteria as was used by the State in its award of this Agreement to Contractor.

**17. Insurance Requirements**

Contractor warrants that it carries adequate liability, worker's compensation and other necessary insurance and shall maintain such insurance at levels acceptable to the State in full force and effect during the term of this Agreement. Contractor agrees to furnish satisfactory evidence of this insurance coverage to the State upon request.

**EXHIBIT D  
(Standard Agreement)**

**18. Subcontractors**

- a. Contractor shall perform the work contemplated by this Agreement with resources available within its own organization except for subcontracted work identified in this Agreement or other attachment incorporated hereto. No other portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the State. The subcontractor must be mutually agreed upon in advance by both parties.
- b. Contractor shall require that any subcontractor agree to be bound by all provisions of this Agreement, as applicable.

**19. Notice of Proceedings**

Contractor shall promptly notify the State in writing of any investigation, examination or other proceeding involving Contractor, including any Key Personnel, commenced by any regulatory agency, which proceeding is not conducted in the ordinary course of Contractor's business.

**20. Cumulative Remedies**

The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

**21. Binding Effect**

This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of Contractor and the State contained therein, shall be binding upon the parties and their successors, assigns and legal representatives.

**22. Publicity**

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by the State.

**23. Services or Procurement Resulting from Agreement**

Neither Contractor, nor any of its subsidiaries, officers or directors, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be an outgrowth of the advice or recommendations that Contractor provides under this Agreement.

**24. Agreement Does Not Violate Law**

Contractor represents and warrants that neither the execution of this Agreement nor the acts contemplated hereby nor compliance by Contractor with any provisions hereof will:

- a. Violate any provision of the charter documents of Contractor;
- b. Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or
- c. Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Contractor may be bound, the violation of

**EXHIBIT D  
(Standard Agreement)**

which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of Contractor.

**25. Power and Authority**

Contractor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by Contractor and no other proceeding on the part of Contractor is necessary to authorize this Agreement. Contractor has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

**26. Signature Authorization**

The person signing this Agreement warrants that he/she is an agent of Contractor and is duly authorized to enter into this Agreement on behalf of Contractor.

**27. Entire Agreement; Order of Precedence**

- a. This Agreement, including documents that have been incorporated in this Agreement by reference, contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement.
- b. In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including exhibits and attachments; (iii) the Request for Proposal (RFP) if any; (iv) Contractor's response to the RFP if any; and (v) any other provisions, terms, or materials incorporated herein.

**28. Termination at Option of the State**

In addition to the provisions of Paragraph 7 of Exhibit C (General Terms and Conditions), this Agreement may be terminated in whole or in part at any time upon 30 calendar days' written notice by the State, for any reason. Upon receipt of a termination notice, Contractor shall promptly discontinue all services affected unless the notice specifies otherwise. In the event the State terminates all or a portion of this Agreement for any reason, it is understood that the State will provide payment to Contractor for satisfactory services rendered prior to the termination, but not in excess of the maximum amount of this Agreement.

**29. Termination for Insolvency**

Contractor shall notify the State immediately in writing in the event that Contractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed and qualifies. In the event of any of the foregoing events, or if the State determines, based on reliable information, that there is a substantial probability that Contractor will be financially unable to continue performance under this Agreement, the State may terminate this Agreement and all further rights and obligations immediately.

**30. Completion**

In the event of termination for default, the State reserves the right to take over and complete the work by contract or other means. In such case, Contractor will be liable to the State for any additional cost incurred by the State to complete the work whether reimbursed or not.

**EXHIBIT D**  
**(Standard Agreement)**

**31. Effect of Termination**

All duties and obligations of the State and Contractor shall cease upon termination of this Agreement, except that:

- a. Each party shall remain liable for any rights, obligations, or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination; and
- b. Contractor shall provide for the return of all records of the State to the State or its designee and shall cooperate fully to effect an orderly transfer of services.

**32. Termination for Expatriation**

Contractor shall notify the State immediately in writing in the event that Contractor or its parent files any notice with the Securities and Exchange Commission that Contractor intends to reincorporate offshore. In the event of such notice, the State may terminate this Agreement and all further rights and obligations immediately by giving five (5) days' notice in writing in the manner specified herein.

**33. Compliance With Political Reform Act**

**Contractor acknowledges that the State is subject to the provisions of the Political Reform Act (Government Code section 81000 et seq. and all regulations adopted thereunder, including, but not limited to, California Code of Regulations, title 2, section 18700 et. seq.)** and Contractor shall comply promptly with any requirement thereunder. If required by law, Contractor shall require its personnel, including without limitation, its Key Personnel all later substitutions therefore, to file Statements of Economic Interests in compliance with the Conflict of Interest Code for the Office of the State Treasurer and the various boards, authorities, commissions, and committees chaired by the State Treasurer (California Code of Regulations, title 2, section 1897). All such reports shall be filed simultaneously with the State.

**34. Darfur Contracting Act**

Effective January 1, 2009, all Invitations for Bids (IFB) or Requests for Proposals (RFP) for goods or services must address the requirements of the Darfur Contracting Act of 2008 (Act). (Public Contract Code section 10475 et seq.) The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with "scrutinized" companies that do business in the African nation of Sudan of which the Darfur region is a part, for the reasons described in Public Contract Code section 10475.

A scrutinized company is a company doing business in Sudan as defined in Public Contract Code section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a State agency for goods or services. (Public Contract Code section 10477(a).)

Therefore, Public Contract Code section 10478(a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a "scrutinized" company when it submits a bid or proposal to a State agency. A scrutinized company may still, however, submit a bid or proposal for a contract with a State agency for goods or services if the company first obtains permission from DGS according to the criteria set forth in Public Contract Code section 10477(b).

**EXHIBIT E  
(Standard Agreement)**

**ADDITIONAL PROVISIONS**

**1. Progress Payments**

Progress payments are permitted for tasks completed under this Agreement. Ten percent (10%) of the invoiced amount shall be withheld pending final completion of each task. Any funds withheld with regard to a particular task may be paid upon completion of that task.

**2. Conflict of Interest; No Profit**

- A. Contractor certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.
- B. Contractor shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain or which gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.