

## Achieving a Better Life Experience (“ABLE”) Act Board

### Request for Proposals No. ABLE01-16 529A Program Consulting Services Notice to Prospective Bidders

October 3, 2016

#### MEMBERS

JOHN CHIANG, CHAIRPERSON  
State Treasurer

BETTY T. YEE  
State Controller

MICHAEL COHEN  
Director of Finance

NANCY BARGMANN  
Director of Developmental Services

DR. APRIL LOPEZ  
Chairperson of the State Council on  
Developmental Disabilities

JOE XAVIER  
Director of Rehabilitation

LINDA SCHAEDLE  
Chairperson of the State  
Independent Living Council

EXECUTIVE DIRECTOR  
Christina Elliot

You are invited to review and respond to this Request for Proposals No. ABLE01-16 (“RFP”) for 529A program consulting services.

In submitting your proposal, you must comply with all instructions in the RFP. The RFP includes the Sample Standard Agreement the winning bidder will be expected to execute. Note that all agreements entered into with the State of California will include by reference General Terms and Conditions and Contractor Certification Clauses that may be viewed and downloaded online at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>. The General Terms and Conditions are not negotiable. If you do not have internet access, a hard copy of the RFP can be provided upon request by contacting the person listed below.

All responses to this RFP must be submitted in hard copy and received by the Board no later than **4:00 p.m. Pacific Time on October 28, 2016**. Email or faxed submissions will not be accepted. All proposals must be mailed or delivered to:

ABLE Act Board  
915 Capitol Mall, Room 110  
Sacramento, California 95814  
Attention: Christina Elliott, Executive Director

In the opinion of the ABLE Act Board, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, contact Christina Elliott, Executive Director, by email at [Christina.Elliott@treasurer.ca.gov](mailto:Christina.Elliott@treasurer.ca.gov). See Section C.2 of this RFP.

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

**PLEASE CAREFULLY READ THE RFP AND FOLLOW THE INSTRUCTIONS.**

**Table of Contents**

<u>Section</u>	<u>Page</u>
A) Purpose and Description of Services – Scope of Work.....	3
B) Minimum Qualifications for Bidders .....	4
C) Proposal Requirements and Information.....	5
1) Schedule (Key Action Dates).....	5
2) Questions and Answers.....	5
3) Submission of Proposal.....	5
4) Evaluation Process.....	8
5) Award and Protest.....	8
6) Disposition of Proposals.....	9
7) Agreement Execution and Performance.....	9
D) Qualifications and Experience.....	9
1) Bidder’s Background and Personnel Information.....	9
2) Experience/Expertise in 529 or 529A Consulting / References.....	10
E) Cost Proposal.....	11
F) Legal, Disciplinary, and Conflict of Interest Disclosures .....	11
G) DVBE and Preference Programs.....	12
1) DVBE.....	12
2) Small Business Preference.....	12
3) Target Area Contract Preference Act.....	13
H) Required Attachments.....	13

Attachments

- Attachment 1 - Required Attachment Check List
- Attachment 2 - Proposal/Proposer Certification Sheet
- Attachment 3 - Cost Proposal Worksheet
- Attachment 4 - Bidder References
- Attachment 5 - Minimum Qualifications Certification
- Attachment 6 - Payee Data Record (STD. 204)
- Attachment 7 - Contractor’s Certification Clauses (CCC-307)
- Attachment 8 - Darfur Contracting Act Certification Form
- Attachment 9 - Small Business or Microbusiness Preference (if applicable)
- Attachment 10 - Non-Small Business Preference (if applicable)
- Attachment 11 - Target Area Contract Preference Act (if applicable)

Sample Standard Agreement

## **A) Purpose and Description of Services – Scope of Work**

### **Scope Overview**

The Achieving a Better Life Experience Act Board (“ABLE Act Board”, “Board”, or the “State”) is the administrator of California’s 529A Qualified ABLE Program as defined in Welfare and Institutions Code section 4875(k) (“ABLE Program” or “Program”), and the State agency responsible for the effective and efficient administration of the California ABLE Program Trust (“Trust”).

A qualified 529A program consultant is needed to provide the Board with assistance with Program (includes the Trust) development and implementation, including drafting regulations implementing the California ABLE Act (Welfare and Institutions Code section 4875 et seq.), and in adherence with Internal Revenue Code section 529A and federal regulations regarding Internal Revenue Code section 529A; and provide the Board with expertise on the 529A industry, including trends, marketing and distribution strategies, 529A program comparison analyses, and assistance with writing request for proposals for program administration and investment management services. More information about the ABLE Act can be found online at [www.treasurer.ca.gov/able](http://www.treasurer.ca.gov/able). The Board anticipates the Program will be implemented in summer 2017.

### **Sample Standard Agreement**

This Request for Proposals No. ABLE01-16 (“RFP”) includes a Sample Standard Agreement for each Bidder’s review. The Sample Standard Agreement contains the language that the Board expects to utilize for this contract. The term of the agreement entered into pursuant to this RFP, if any, will be one year with an option, at the Board’s sole discretion, to extend the contract for up to one year at the same rate(s). The contract may require approval by the Department of General Services (“DGS”). In no event shall services be performed prior to approval by the DGS Office of Legal Services, if required.

### **Background**

The California Legislature authorized creation of the Board, Program, and Trust in 2015 (Welfare and Institutions Code section 4875 et seq. (“Act”)), intending it to be a qualified ABLE program as defined in Section 529A of the Internal Revenue Code of 1986, as amended (“IRC”). The Act authorizes Trust investments for a beneficiary’s savings for qualified disability expenses. The Board was established to administer the state’s qualified ABLE program.

The Board is the state entity responsible for effective and efficient administration of the Trust. The seven-member Board expects to meet monthly. Meetings are held in accordance with the California Bagley-Keene Open Meeting Act and will generally be held in Sacramento, California at the State Treasurer’s Office, 915 Capitol Mall, but may be held at other locations.

### **Scope of Work**

The 529A program consultant will assist the Board in the design and implementation of the Program (includes the Trust), which include the following:

- Make recommendations on Program design and structure. Provide information and insight on the 529A industry. Provide strategic consulting advice for the Program.
- Assist with drafting and implementing regulations. Regulations must adhere to requirements under Welfare and Institutions Code section 4875 et seq., IRC Section 529A, and Internal Revenue Service regulations. The Board may implement emergency and permanent regulations. The Board expects to submit emergency regulations to the Office of Administrative Law (“OAL”) for approval early February 2017. Contractor will review and edit draft emergency regulations in January 2017, and assist with any necessary changes requested by OAL or as a result of public

comments during the emergency rulemaking period. Contractor will review and edit draft permanent regulations and assist with any necessary changes requested by OAL or as a result of public comments during the subsequent permanent rulemaking period.

- Assist with public hearings and stakeholder meetings as requested by the Board. Approximately 12 public hearings and 2-4 stakeholder meetings will be held prior to and during the regulation drafting and implementation process. Assess comments from the public/stakeholders as requested by the Board.
- Participate in the development of requests for proposals and the subsequent selection processes as a subject matter expert to procure services of an investment manager and program administrator (“program manager”), as well as an investment consultant. The Board expects to issue both requests for proposals in late February 2017, with a contract term start date of late April 2017 for each contract. Contractor will provide drafts of the requests for proposals by January 15, 2017, and provide final drafts by February 10, 2017. The requests for proposals must comport with California state procurement laws.
- Assist the Board by providing 529A program trends and comparisons. Advise the Board of new or different strategies that could be employed to increase participation in the Program. Offer opinion or strategy on Program name, branding, distribution, and marketing.
- Provide analysis of program manager’s performance, particularly in marketing and administrative areas using monthly, quarterly and annual data. Assist in evaluation of marketing and administrative benchmarks.
- Review disclosure language and keep abreast of regulatory issues on the Board’s behalf.
- Work with the Board’s contractors, such as the investment consultant and program manager, as needed.
- Provide second opinion (the Board will have a primary investment consultant) on investments and investment performance if Bidder, or a subcontractor, is qualified.
- Attend all Board meetings unless notified otherwise by the Board. It is anticipated that the Board will meet approximately once every month. Attend other meetings pertaining to the 529A industry (Internal Revenue Service, Securities and Exchange Commission, other states, or others) with or on behalf of the Board as requested.
- Be available to consult with Board members and the Executive Director from 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday.
- Respond to the need for telephone consultation within a 24-hour period and be available for meetings with the Board with no greater than 10 days’ notice.

## **B) Minimum Qualification for Bidders**

### **Bidder must complete Attachment 5 certifying that the Bidder meets the following minimum qualifications:**

- Bidder must have a minimum of three years of experience providing 529 program consulting services to or on behalf of public or private entities (IRC Section 529).
- Must be qualified to do business in the State of California. If awarded the contract, Bidder must be able to provide, at the State’s request, evidence of qualification to do business in the State of California from the California Secretary of State. If awarded the contract, Bidder must also be able

to provide, at the State's request, evidence of qualification to do business in the State of California from the California Secretary of State for any subcontractor identified as personnel under "Qualifications and Experience", Section D.

- If applicable, Bidder must hold and maintain all licenses and registrations required by applicable federal and state laws for businesses offering investment and municipal advisory services. All such licenses and registrations must be current and in good standing.

### C) Proposal Requirements and Information

#### 1) Schedule (Key Action Dates)

All Bidders are hereby advised of the following schedule and will be expected to adhere to the required dates and times (all times listed are Pacific Time (PT)).

Date	Action
October 3, 2016	RFP available to Prospective Bidders
October 12, 2016, 4:00 p.m. (PT)	Deadline to Submit any Written Questions
October 19, 2016	Answers to Written Questions
October 28, 2016, 4:00 p.m. (PT)	Deadline to Submit Proposals
November 4, 2016	Notice of Intent to Award Contract
November 14, 2016	Proposed Contract Award Date
December 5, 2016	Proposed Contract Start Date (pending DGS approval)

The Board reserves the right to change the above dates and times, and, if so, potential Bidders will be notified via email and an addendum will be issued. The Board also reserves the right not to award an Agreement at all.

#### 2) Questions and Answers

In the opinion of the Board, this RFP is complete and needs no further explanation. However, if you have questions, or should you need any clarifying information, you may submit written questions no later than 4:00 p.m. PT on October 12, 2016 by email to [Christina.Elliott@treasurer.ca.gov](mailto:Christina.Elliott@treasurer.ca.gov) or by fax to (916) 653-3125.

Answers to all written questions received by 4:00 p.m. PT on October 12, 2016 will be available online at [www.treasurer.ca.gov/able](http://www.treasurer.ca.gov/able) by close of business on October 19, 2016.

#### 3) Submission of Proposal

a) Proposals should provide straightforward and concise descriptions of the Bidder'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) **In preparing proposals, Bidders must:**

- **Include a cover letter with the following information:**

- o The name, address, email, phone and fax numbers of the principal contact responsible for the oversight of the agreement. Indicate the availability of this person for meetings with the Board.
  - o The name, address, email, phone and fax numbers of the project representative who will be available to the Board on a day-to-day basis during the term of the agreement.
  - o The name, address, email, phone, fax number and name of a key contact at each partner, if a consortium, and subcontractor and what the aforementioned would be responsible for under the agreement.
- c) All proposals must be submitted in hard copy under sealed cover and received by the Board by 4:00 pm PT on October 28, 2016. **Proposals received after this date and time will not be considered.** Proposals received by fax or email will be rejected.
- d) A minimum of one (1) original and five (5) copies of the proposal must be submitted.
- e) 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 proposing firm. All additional proposal sets may contain photocopies of the original package.
- f) The proposal envelopes must be plainly marked with the RFP number and title, your firm name and address, and must be marked with "**DO NOT OPEN**", as shown in the following example:

**Request for Proposals No. ABLE01-16**  
**529A Program Consulting Services**  
**Firm Name**  
**Firm Address**  
**Contact Person and Phone Number**  
**"DO NOT OPEN"**

If the proposal is made under a fictitious name or business title, the actual legal name of Bidder must be provided.

Proposals not submitted under sealed cover and marked as indicated may be rejected.

- g) Proposals that omit the Minimum Qualification Certification that is included in Attachment 5 of Section H will not be considered. Proposals shall include each of the attachments (if applicable) on the Required Attachment Check List in Section H. Proposals that do not comply with the requirements of the RFP shall be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements and will be rejected.
- h) One (1) original and five (5) copies of the proposal must be mailed or delivered to the following address:

**ABLE Act Board**  
**Attention: Christina Elliott, Executive Director**  
**915 Capitol Mall, Room 110**  
**Sacramento, California 95814**

- 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. The Board may reject any or all proposals and may waive an immaterial deviation in a proposal. The Board's waiver of an immaterial deviation shall in no way modify the RFP document or excuse the Bidder from full compliance with all requirements if awarded the agreement.
- k) The Bidder is entirely responsible for the costs of developing proposals and costs incurred in anticipation of award of the Agreement. Such costs shall not be charged to the Board.
- l) An individual who is authorized to bind the proposing firm contractually shall sign Required Attachment 2, Proposal/Proposer Certification Sheet. The signature must indicate the title or position that the individual holds in the firm. An unsigned proposal may be rejected.
- m) A Bidder 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 Schedule (Key Action Dates) in Section C(1). The submission of a new proposal must comply with the requirements in this section. Proposal modifications offered in any other manner, oral or written, will not be considered.
- n) A Bidder may withdraw its proposal by submitting a written withdrawal request to the Board, signed by the Bidder or an authorized agent in accordance with Section C(3)(m). A Bidder may thereafter submit a new proposal prior to the proposal submission deadline. Proposals may not be withdrawn without cause subsequent to the proposal submission deadline.
- o) The Board may modify this RFP prior to the date fixed for submission of proposals by the issuance of an addendum.
- p) The Board reserves the right to reject all proposals. The Board is not required to award an agreement.
- q) Before submitting a proposal, Bidders should carefully review the proposal, correct all errors and confirm compliance with the RFP requirements.
- r) Where applicable, Bidder should carefully examine work sites and specifications. No additions or increases to the agreement amount will be made due to a lack of careful examination of work sites and specifications.
- s) More than one proposal from any firm, organization, partnership, corporation or association under the same or different names, will not be considered. Reasonable grounds for believing that any Bidder has submitted more than one proposal for the work contemplated herein will cause the rejection of all proposals submitted by that Bidder. If there is reason to believe that collusion exists among the Bidders, none of the participants in such collusion will be considered in this or future procurements.
- t) No oral understanding or agreement shall be binding on either party.
- u) **Public Contract Code Section 10365.5 DOES NOT APPLY: Please be aware that Public Contract Code section 10365.5 does not apply to this RFP. (See Welfare and Institutions Code section 4875 et seq.)**

#### 4) Evaluation Process

- a) The initial review of the proposals will confirm that all information and required attachments have been submitted in conformity with the requirements of this RFP. The absence of required information and attachments will cause a proposal to be deemed nonresponsive and may result in the proposal's disqualification. Responsive proposals will then be reviewed and scored by an evaluation committee. The categories and the corresponding total possible points for each category is as follows:

<b>Categories</b>	<b>Total Possible Points</b>
Bidder's Background Information	30 points
Experience/Expertise in 529 or 529A Consulting	40 points
Cost	30 points
<b>Total Possible Points</b>	<b>100 points</b>

- b) The following point scale will be used to score the responses to each scored category except with regard to costs.

Percent of Maximum Score Allotted to Particular Weighted Criterion

- 100% - Excellent response backed by demonstrated ability
- 85% - Good response backed by demonstrated ability
- 75% - Fair response backed by demonstrated ability
- 60% - Poor response
- 0% - Bidder does not demonstrate ability

- c) Proposals that contain false or misleading statements, or that provide references which do not support an attribute or condition claimed by the Bidder, may be rejected. If, in the opinion of the Board, such information was intended to mislead the Board in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, it will be the basis for rejection of the proposal.
- d) The agreement will be awarded to the responsible and responsive Bidder earning the highest total score.
- e) The Board is not required to award an agreement.

#### 5) Award and Protest

- a) Notice of the proposed award shall be posted in a public place in the office of the Board, 915 Capitol Mall, Sacramento, California 95814 and on the Internet at [www.treasurer.ca.gov/able](http://www.treasurer.ca.gov/able) for five (5) working days prior to awarding the agreement.
- b) If any Bidder, prior to the award of agreement, files a protest with Board and the DGS Office of Legal Services, 707 Third Street, 7<sup>th</sup> Floor, Suite 7-330, West Sacramento, California 95605, on the grounds provided under Public Contract Code section 10345(b), the agreement shall not be awarded until either the protest has been withdrawn or DGS has decided the matter. It is suggested that any protest be submitted by certified or registered mail.
- c) Within five (5) days after filing the initial protest, the protesting Bidder shall file with the Board and the DGS Office of Legal Services a detailed statement specifying the grounds for the protest.
- d) Upon resolution of the protest and award of the agreement, Contractor must complete and submit to the Board the Payee Data Record (STD 204), to determine if the Contractor is



subject to state income tax withholding pursuant to California Revenue and Taxation Code Sections 18662 and 26131. This form can be found on the Internet at [www.osp.dgs.ca.gov](http://www.osp.dgs.ca.gov) under the heading FORMS MANAGEMENT CENTER. No payment shall be made unless a completed STD 204 has been returned to the Board.

- e) Upon resolution of the protest and award of the agreement, Contractor must sign and submit to the Board, page one (1) of the Contractor Certification Clauses (CCC), which can be found on the Internet at [www.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language).

#### **6) Disposition of Proposals**

- a) Upon proposal opening, all documents submitted in response to this RFP will become the property of the Board and the State, 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.
- b) Proposal packages may be returned only at the Bidder's expense, unless such expense is waived by the Board.

#### **7) Agreement Execution and Performance**

- a) Performance shall start on the contract start date, or on the express date set by the awarding agency and the Contractor, after all approvals have been obtained and the agreement is fully executed. If the Contractor fails to commence work at the agreed upon time, the awarding agency, upon five (5) days written notice to the Contractor, reserves the right to terminate the agreement. In addition, the Contractor shall be liable to the State for the difference between Contractor's proposal price and the actual cost of performing work by another contractor.
- b) All performance under the agreement shall be completed on or before the termination date of the agreement.
- c) The General Terms and Conditions included as Exhibit C to the Sample Standard Agreement are not negotiable. Exhibit C (currently GTC-610) can be found online at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>

#### **D) Qualifications and Experience**

Questions in this Section D are intended to demonstrate the Bidder's qualifications. Points will be awarded for the Bidder's response(s) to each question. The allocation of points is defined in Section C of this RFP entitled "Evaluation Process." Questions should be answered for each relevant personnel, or subcontractor to the extent applicable if a Bidder is a consortium or is using subcontractors. In preparing proposals, the Bidder must list each question and then provide the Bidder's response to that question in the same order listed in this RFP.

##### **1) Bidder's Background and Personnel Information (Maximum of thirty (30) points)**

- a) Provide an overview of the Bidder's firm including mission statement and vision statement, number of years experience providing consultation, and what services Bidder's firm will bring to this contract.
- b) Provide a brief history of Bidder's firm. Describe the organizational structure and explain how this structure will be used to perform the requirements of this contract. Explain the advantages of this structure.

- c) Identify the personnel that will be providing the services if awarded the contract, including years and type of experience for each person. Experience should include number of years at the current firm as well as all prior relevant employment. Please also include staff of subcontractors, if any. The contractor is expected to ensure that the quality and availability of personnel assigned to perform services under the contract will be maintained over the term of the contract. Replacements must have substantially the same or better qualifications and experience than the original personnel. Any change in assigned personnel must be pre-approved by the Board.

Identify the role each person will serve in the contract and his/her title.

Provide detailed resumes for the individuals that will be directly involved in providing the services under the contract including any proposed subcontractors and their employees, if any.

- d) Indicate who will have ultimate responsibility for this contract. Indicate the availability of this person for live or telephone meetings with the Board. Describe the Bidder's backup procedures if the primary person assigned to this account leaves the firm, or is otherwise unavailable.

**2) Experience/Expertise in 529 or 529A Consulting / References (Maximum of forty (40) points)**

- a) Describe the Bidder's experience in advising boards or other entities on 529 or 529A industry matters. Include the names of the boards/entities, the size of the plans (number of accounts), types of plans (savings or prepaid), the number of years that the Bidder has provided this service, the number of boards/entities to which the Bidder is currently providing 529 or 529A related advice and the approximate dollar value of the portfolios for which consultative services are provided. Explain how this experience will benefit the Board.
- b) Describe the Bidder's understanding of the objectives of the ABLE Act Program. What does the Bidder see as the biggest challenge for California and how would the Bidder address it? What special expertise does Bidder bring to advising the Board?
- c) Explain your views on how the 529A marketplace and what programs need to be considered to be competitive.
- d) Affirm the Bidder's ability to perform every item in Section A, Scope of Work. List any items the Bidder would not be able to provide and if Bidder would subcontract these.

If Bidder has been involved with the issuance of a request for proposals for a 529 or 529A program manager, please describe the experience in detail. If Bidder has been involved with the development and/or implementation of another state's 529 or 529A program, please describe the experience in detail.

Describe Bidder's ability to assist the Board develop and implement the California ABLE Act Program. Describe Bidder's ability and commitment to make the resources available to avoid any resource constraints against competing client priorities or engagements.

- e) Provide at least two recent examples of client research or reports prepared by Bidder regarding 529 or 529A industry strategies or analysis.
- f) Discuss any changes/material refinements in Bidder's advising philosophy which have occurred within the past three years. What prompted the changes/refinements?
- g) Provide the name, address, telephone number, contact name and title for five (5) firms to serve as references for Bidder, using the format in Attachment 4. Provide three (3) references for any subcontractors you plan to use. Identify the individuals at Bidder's firm who were responsible for providing consulting services to these clients/entities. Submission

of Attachment 4 is mandatory. Proposals that fail to submit Attachment 4 shall be considered nonresponsive and rejected.

**E) Cost Proposal (Maximum of thirty (30) points)**

Use Attachment 3 (Cost Proposal Worksheet) as a guide in completing your cost proposal. Include job classifications to represent your firm. The Board expects the total cost for the Scope of Work not to exceed \$200,000 per year.

The cost proposal shall:

- Follow the template outlined in Attachment 3 – Cost Proposal.
- Assume a total of 300 hours of staff work (including subcontractor staff work) per year. Estimate the number of hours out of the 300 each level of staff who will be assigned to the contract will work. The total number of hours for identified staff must equal 300.
- Identify and include an hourly rate for each level of staff who will be assigned to work on the services outlined in this RFP. The hourly rates identified will be utilized in the contract awarded to the winning bidder for reimbursement for services performed. All-inclusive flat fees and/or retainer fees will not be accepted for consideration.

Travel costs included in Attachment 3 – Cost Proposal are capped at \$10,000 per year. The rates for necessary traveling expenses and per diem shall be set in accordance with the rates of the California Department of Human Resources (CalHR) for comparable classes and no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Board.

Proposals submitted with a cost proposal that fails to meet any of the specified requirements outlined above, or in a form other than as provided for in Attachment 3, will be considered nonresponsive and rejected.

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

Lowest cost proposal, based on the estimated Total Cost for One Year Contract Term from Attachment 3, is awarded the maximum cost points. Other proposals are awarded cost points based on the following calculation:

$$(\text{Lowest Bidder's cost proposal} / \text{Other Bidder's cost proposal}) = (\text{factor})$$

$$\text{Cost points for Other Bidder} = (\text{factor}) \times \text{maximum cost points}$$

EXAMPLE: A maximum of 30 points is available.

$$\text{Lowest Bidder's cost proposal} = \$75,000$$

$$\text{Other Bidder's cost proposal} = \$100,000$$

$$(\text{Lowest Bidder's cost proposal} / \text{Other Bidder's cost proposal}) = \$75,000 / \$100,000 = 3/4$$

$$\text{Cost points awarded to Other Bidder} = 3/4 \times 30 \text{ maximum points} = 22.5 \text{ cost points}$$

**F) Legal, Disciplinary, and Conflicts of Interest Disclosures**

Advise if any partner, officer, investment officer, portfolio manager, research analyst, or trader of the Bidder's firm has been convicted or pleaded no contest in a case stemming from a felony indictment. Any such conviction or plea must be disclosed and must be accompanied by a full explanation of the circumstances surrounding it.

Advise if the Bidder is or was a defendant in litigation relating to any services which it proposes to provide to the Board. Any final settlement, administrative decision, or judgment made in connection with this litigation must be disclosed and must be accompanied by a full explanation of the circumstances surrounding it.

Advise if the Bidder, any partner, related company (parent, subsidiary, sister), affiliate or joint venture, or any owner, officer, director, principal, or management level employee of the Bidder been involved in any enforcement action by the Securities and Exchange Commission or any other governmental regulatory agency or been named a defendant in litigation where there was an allegation of violation of fiduciary responsibility. If yes, explain in detail.

Disclose any other legal or disciplinary event that is material to the Board's evaluation of the Bidder or the integrity of Bidder's management or advisory personnel by either: (1) identifying the specific type of event and specifically referring to the relevant portions of the Bidder's most recent Forms MA or MA-I (and, if doing so, providing detailed information specifying where the Board may electronically access such forms), or (2) providing a writing that fully and fairly discloses the information required to be disclosed under MSRB Rule G-42(c)(ii) and (b).

Advise if the Bidder has ever been terminated for cause from any contract. If the answer is yes, cite the background of the contract, reason for the termination, and what the Bidder has done to change operations or personnel to preclude the circumstances regarding the termination from re-occurring.

Disclose any business relationships, which may be construed to be potential or actual conflicts of interest. The contractor will have a continuing requirement to disclose any business relationships that may be construed to be a potential or actual conflict. The disclosure must be sufficiently detailed to inform the Board of the nature, implications and potential consequences of each conflict and must include an explanation of how the Bidder addresses, or intends to manage or mitigate, each conflict.

The Board may reject a proposal due to any disclosure or conflict of interest (potential or actual) that is material in the sole opinion of the Board.

#### **G) California Disabled Veteran Business Enterprise and Preference Programs**

- 1) The Disabled Veteran Business Enterprise (DVBE) participation requirements for this RFP and contract have been waived.
- 2) Small Business Preference – [www.dgs.ca.gov/pd/Programs.aspx](http://www.dgs.ca.gov/pd/Programs.aspx) (SB/DVBE - OSDS tab) (If there are any inconsistencies herein with the applicable statutes, regulations, and State Contracting Manual, the statutes, regulations, and State Contracting Manual shall supersede.)

##### Small Business / Microbusiness Preference

A five percent (5%) preference will be applied to certified small businesses submitting proposals for this RFP. To obtain the preference, Proposer must either be certified as a small business and submit a copy of their certification approval letter from DGS / Office of Small Business and DVBE Services (OSDS) or submit a complete application for certification to DGS / OSDS by 5:00 p.m. PT on the proposal due date. However, the proposed winning Proposer must be a certified small business at the time of contract award. The 5% preference is used only for computation purposes to determine the winning Proposer and does not alter the amounts of the resulting contract.

Once each proposal has been scored, if the highest scored proposal is from a non-certified small business, then 5% of the highest scoring proposal is added to the total "earned" points for each proposal submitted by a certified small business. These final numbers, with the 5% included, are then used to determine the highest scoring proposal.

Questions regarding the small business certification or preference approval should be directed to the OSDS at (916) 375-4940 or can be found online at <http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>.

#### Non-Small Business Preference

A five percent (5%) 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 proposal must include a list of the small business(es) with which the Proposer commits to subcontract in an amount of at least 25% of the net proposal 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 proposal 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, 5) and the dollar amount or percentage of the net proposal price (as specified in the solicitation) per subcontractor.

Proposers claiming the 5% preference must commit to subcontract for at least 25% of the net proposal 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. PT on the proposal due date. Questions regarding certification should be directed to the OSDS at (916) 375- 4940 or can be found online at <http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>.

The preference to a non-small business firm that commits to California certified small business subcontractor participation of 25% of its net proposal price shall be 5% of the highest scoring proposal. A non-small business, which qualifies for this preference, may not take an award away from a certified small business.

- 3) Target Area Contract Preference Act (TACPA) - [www.dgs.ca.gov/pd/Programs.aspx](http://www.dgs.ca.gov/pd/Programs.aspx) (Dispute Resolution tab) (If there are any inconsistencies herein with the applicable statutes, regulations, and State Contracting Manual, the statutes, regulations, and State Contracting Manual shall supersede.)

The TACPA preference will be granted for this procurement. Proposers wishing to take advantage of the TACPA preference will need to review the following website and submit the appropriate response with the proposal:

<http://www.pd.dgs.ca.gov/edip/tacpa.htm>

Proposers wishing to take advantage of the TACPA preference are required to submit the following applications/forms:

- TACPA (Std. 830)
- Bidder's Summary of Contract Activities and Labor Hours (DGS/PD 525)
- Manufacturer Summary of Contract Activities and Labor Hours (DGS/PD 526)

#### **H) Required Attachments**

**Refer to the following pages for additional Required Attachments.**

## ATTACHMENT 1

### REQUIRED ATTACHMENT CHECK LIST

Complete this checklist to confirm the attachments. Place a check mark or "X" next to each item that you are submitting to the State. **For your proposal to be responsive, each of the following required attachments must be submitted with your proposal package.**

This checklist should be returned with your proposal package.

<u>Attachment</u>	<u>Attachment Name/Description</u>
_____ Attachment 1	Required Attachment Check List
_____ Attachment 2	Proposal/Proposer Certification Sheet
_____ Attachment 3	Cost Proposal Worksheet
_____ Attachment 4	Bidder References
_____ Attachment 5	Minimum Qualifications Certification
_____ Attachment 6	Payee Data Record (STD. 204)
_____ Attachment 7	Contractor Certification Clauses (CCC-307)
_____ Attachment 8	Darfur Contracting Act Certification Form
_____ Attachment 9	Small Business or Microbusiness Preference (if applicable)  Additional information about this preference can be found online at <a href="http://www.dgs.ca.gov/pd/Programs/OSDS.aspx">http://www.dgs.ca.gov/pd/Programs/OSDS.aspx</a> .
_____ Attachment 10	Non-Small Business Preference (if applicable)  Additional information about this preference can be found online at <a href="http://www.dgs.ca.gov/pd/Programs/OSDS.aspx">http://www.dgs.ca.gov/pd/Programs/OSDS.aspx</a> .
_____ Attachment 11	Target Area Contract Preference Act (if applicable)  The forms and additional information about this preference program can be found online at <a href="http://www.dgs.ca.gov/pd/Programs/DisputeResolution.aspx">http://www.dgs.ca.gov/pd/Programs/DisputeResolution.aspx</a> .

**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.

- A. Place all required attachments behind this certification sheet.
- B. 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.
- C. The signature below certifies to the best of your knowledge that the information provided on this document is true and complete.

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



**ATTACHMENT 3**

**COST PROPOSAL WORKSHEET**

All specifications outlined in Section E of the RFP shall be met or the Bidder's proposal will be considered non-responsive and rejected.

DIRECT LABOR (Staff Level/Title)	HOURS	HOURLY RATE	TOTAL	<b><u>TOTALS</u></b>
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
<i>TOTAL DIRECT LABOR <sup>1</sup></i>	<b>300</b>			\$ (A)
<b>INDIRECT COSTS (OVERHEAD &amp; FRINGE BENEFITS)</b>		<b>%</b>	<b>TOTAL</b>	
Overhead Rate		%	\$	
Fringe Benefits		%	\$	
			<i>TOTAL INDIRECT COSTS</i>	\$ (B)
<b>DIRECT COSTS (EXCEPT LABOR)</b>			<b>TOTAL</b>	
Travel Costs			\$ <b>10,000</b>	
Equipment and Supplies (Itemized)			\$	
Other Direct Costs (Itemized)			\$	
			<i>TOTAL DIRECT COSTS (EXCEPT LABOR)</i>	\$ (C)
<b><i>TOTAL COST FOR ONE-YEAR CONTRACT TERM <sup>2</sup></i></b>				<b>\$</b>

<sup>1</sup> Total shall be calculated assuming 300 total hours of services provided by all levels of staff (including subcontractors) per year.

<sup>2</sup> Total shall be the sum of the totals for A-C. Total shall be the total annual cost and shall not exceed \$200,000 for the one-year contract term. Travel costs included in this Attachment 3 – Cost Proposal are capped at \$10,000 per year.

**ATTACHMENT 4**

**BIDDER 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 five references for services performed within the last five years, which are similar to the scope of work to be performed in this contract. If five references cannot be provided, provide an explanation 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			

<b>REFERENCE 4</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			

\*Optional

---

**REFERENCE 5**

---

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

---

SUBCONTRACTOR REFERENCES (if applicable)

List below three references for services performed by your subcontractor(s) 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, provide an explanation on an attached sheet of paper.

---

**REFERENCE 1**

---

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

---

---

**REFERENCE 2**

---

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

---

---

**REFERENCE 3**

---

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

---

\*Optional

**ATTACHMENT 5**

**MINIMUM QUALIFICATIONS CERTIFICATION**

The firm certifies that it fulfills the minimum qualifications outlined in Section B of Request for Proposals No. ABLE01-16 (the "RFP").

On behalf of \_\_\_\_\_, I certify that said firm  
(Firm Name)  
complies with the Minimum Qualifications set forth in Section B of the RFP.

\_\_\_\_\_  
(Authorized Signature of Firm)

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

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)



**PAYEE DATA RECORD**

STD 204 (Rev. 6-2003) (REVERSE)

1	<p><b><u>Requirement to Complete Payee Data Record, STD. 204</u></b></p> <p>A completed Payee Data Record, STD. 204, is required for payments to all non-governmental entities and will be kept on file at each State agency. Since each State agency with which you do business must have a separate STD. 204 on file, it is possible for a payee to receive this form from various State agencies.</p> <p>Payees who do not wish to complete the STD. 204 may elect to not do business with the State. If the payee does not complete the STD. 204 and the required payee data is not otherwise provided, payment may be reduced for federal backup withholding and nonresident State income tax withholding. Amounts reported on Information Returns (1099) are in accordance with the Internal Revenue Code and the California Revenue and Taxation Code.</p>								
2	<p>Enter the payee's legal business name. Sole proprietorships must also include the owner's full name. An individual must list his/her full name. The mailing address should be the address at which the payee chooses to receive correspondence. Do not enter payment address or lock box information here.</p>								
3	<p>Check the box that corresponds to the payee business type. Check only one box. Corporations must check the box that identifies the type of corporation. The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State provide their Taxpayer Identification Number (TIN). The TIN is required by the California Revenue and Taxation Code Section 18646 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the Internal Revenue Code Section 6109(a).</p> <p>The TIN for individuals and sole proprietorships is the Social Security Number (SSN). Only partnerships, estates, trusts, and corporations will enter their Federal Employer Identification Number (FEIN).</p>								
4	<p><b><u>Are you a California resident or nonresident?</u></b></p> <p>A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.</p> <p>A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident.</p> <p>For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.</p> <p>Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for State income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year.</p> <p>For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:</p> <table border="0"> <tr> <td>Withholding Services and Compliance Section:</td> <td>1-888-792-4900</td> <td>E-mail address:</td> <td>wscs.gen@ftb.ca.gov</td> </tr> <tr> <td>For hearing impaired with TDD, call:</td> <td>1-800-822-6268</td> <td>Website:</td> <td>www.ftb.ca.gov</td> </tr> </table>	Withholding Services and Compliance Section:	1-888-792-4900	E-mail address:	wscs.gen@ftb.ca.gov	For hearing impaired with TDD, call:	1-800-822-6268	Website:	www.ftb.ca.gov
Withholding Services and Compliance Section:	1-888-792-4900	E-mail address:	wscs.gen@ftb.ca.gov						
For hearing impaired with TDD, call:	1-800-822-6268	Website:	www.ftb.ca.gov						
5	<p>Provide the name, title, signature, and telephone number of the individual completing this form. Provide the date the form was completed.</p>								
6	<p>This section must be completed by the State agency requesting the STD. 204.</p>								
	<p><b><u>Privacy Statement</u></b></p> <p>Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, State, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.</p> <p>It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and State law imposes noncompliance penalties of up to \$20,000.</p> <p>You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the State agency(ies) with which you transact that business.</p> <p>All questions should be referred to the requesting State agency listed on the bottom front of this form.</p>								

**ATTACHMENT 7**

CCC-307

**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 8103) (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 lessor 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 over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code Section 10295.3.

### **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**  
**Certification Form**

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  
      Initials           three years, 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>

**ATTACHMENTS 9, 10 & 11**

**PREFERENCE PROGRAMS (IF APPLICABLE)**

Attach proof in claiming Small Business or Microbusiness Preference, Non-Small Business Preference, or TACPA, if applicable

**Small Business or Microbusiness Preference**

<http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>

**Non-Small Business Preference**

<http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>

**Target Area Contract Preference Act (TACPA)**

<http://www.dgs.ca.gov/pd/Programs/DisputeResolution.aspx>

**SAMPLE STANDARD AGREEMENT**

STATE OF CALIFORNIA

**STANDARD AGREEMENT**

STD 213 (Rev 06/03)

AGREEMENT NUMBER <b>ABLE01-16</b>
REGISTRATION NUMBER

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

STATE AGENCY'S NAME

**ABLE Act Board**

CONTRACTOR'S NAME

2. The term of this Agreement is:



3. The maximum amount \$ of this Agreement is:

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 Work	<b>3 pages</b>
Exhibit B – Budget Detail and Payment Provisions	<b>1 page</b>
Exhibit C* – General Terms and Conditions	<b>GTC-610</b>
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)	<b>7 pages</b>
<input type="checkbox"/> Exhibit – D* Special Terms and Conditions	

**RFP ABLE01-16 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.)		
BY (Authorized Signature)	DATE SIGNED(Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME		
<b>ABLE Act Board</b>		
BY (Authorized Signature)	DATE SIGNED(Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
		<input type="checkbox"/> Exempt per:

**EXHIBIT A  
(Standard Agreement)**

**SCOPE OF WORK**

1) Background

The California Legislature authorized creation of the Board, Program, and Trust in 2015 (Welfare and Institutions Code section 4875 et seq. ("Act")), intending it to be a qualified ABLE program as defined in Section 529A of the Internal Revenue Code of 1986, as amended ("IRC"). The Act authorizes Trust investments for a beneficiary's savings for qualified disability expenses.

The Achieving a Better Life Experience Act Board ("ABLE Act Board", "Board", or the "State") is the administrator of California's 529A Qualified ABLE Program ("ABLE Program" or "Program"), and the State agency responsible for the effective and efficient administration of the California ABLE Program Trust ("Trust"). The seven-member Board meetings are held in accordance with the California Bagley-Keene Open Meeting Act and will generally be held in Sacramento, California at the State Treasurer's Office, 915 Capitol Mall, but may be held at other locations.

2) Description of Services

The 529A program consultant will assist the Board in the design and implementation of the Program (includes the Trust), which include the following:

- Make recommendations on Program design and structure. Provide information and insight on the 529A industry. Provide strategic consulting advice for the Program.
- Assist with drafting and implementing regulations. Regulations must adhere to requirements under Welfare and Institutions Code section 4875 et seq., IRC Section 529A, and Internal Revenue Service regulations. The Board may implement emergency and permanent regulations. The Board expects to submit emergency regulations to the Office of Administrative Law ("OAL") for approval early February 2017. Contractor will review and edit draft emergency regulations in January 2017, and assist with any necessary changes requested by OAL or as a result of public comments during the emergency rulemaking period. Contractor will review and edit draft permanent regulations and assist with any necessary changes requested by OAL or as a result of public comments during the subsequent permanent rulemaking period.
- Assist with public hearings and stakeholder meetings as requested by the Board. Approximately 12 public hearings and 2-4 stakeholder meetings will be held prior to and during the regulation drafting and implementation process. Assess comments from the public/stakeholders as requested by the Board.
- Participate in the development of requests for proposals and the subsequent selection processes as a subject matter expert to procure services of an investment manager and program administrator ("program manager"), as well as an investment consultant. The Board expects to issue both requests for proposals in late February 2017, with a contract term start date of late April 2017 for each contract. Contractor will provide drafts of the requests for proposals by January 15, 2017, and provide final drafts by February 10, 2017. The requests for proposals must comport with California state procurement laws.

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

- Assist the Board by providing 529A program trends and comparisons. Advise the Board of new or different strategies that could be employed to increase participation in the Program. Offer opinion or strategy on Program name, branding, distribution, and marketing.
  - Provide analysis of program manager's performance, particularly in marketing and administrative areas using monthly, quarterly and annual data. Assist in evaluation of marketing and administrative benchmarks.
  - Review disclosure language and keep abreast of regulatory issues on the Board's behalf.
  - Work with the Board's contractors, such as the investment consultant and program manager, as needed.
  - Provide second opinion (the Board will have a primary investment consultant) on investments and investment performance if Contractor, or a subcontractor, is qualified.
  - Attend all Board meetings unless notified otherwise by the Board. It is anticipated that the Board will meet approximately once every month. Attend other meetings pertaining to the 529A industry (Internal Revenue Service, Securities and Exchange Commission, other states, or others) with or on behalf of the Board as requested.
  - Be available to consult with Board members and the Executive Director from 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday.
  - Respond to the need for telephone consultation within a 24-hour period and be available for meetings with the Board with no greater than 10 days' notice.
- 3) The services shall be performed at the offices of the Contractor and at the offices of appropriate affiliates, related entities, subsidiaries and subcontractors; however there will be some mandatory meetings in or near Sacramento, California.
- 4) Contractor is expected to ensure that the quality and availability of personnel assigned to perform services under the contract will be maintained over the term of the contract. Replacements must have substantially the same or better qualifications and experience than the original personnel. Any change in assigned personnel must be pre-approved by the Board.
- 5) The performance of the Contractor will be evaluated based on the criteria outlined below.
- Responsiveness and timeliness in responding to inquiries made by the Board (members, Executive Director, and staff).
  - Availability to the Board for conference calls and board meetings, as needed.
  - Quality, completeness and timeliness in providing reports, memos, analyses and recommendations to the Board for review and consideration.
  - Quality and accuracy of information, data and support included in all product submitted to the Board.
  - Ability to provide the Board with, or direct the Board, to appropriate resources for information.
  - Ability to provide the Board with up-to-date information on industry standards, changes in the law and state comparisons.
  - Availability of resources to adequately perform on contract requirements (staff, consultants, etc).
  - Demonstrates working relationships with industry peers and organizations.

**EXHIBIT A  
(Standard Agreement)**

- Demonstrates the ability to provide day-to-day management of tasks, coordination of support and administrative activities, and supervision of all Contractor employees.
- Possesses the technical and functional skills, and knowledge to direct all aspects of the contract.

6) The project representatives during the term of this agreement will be:

State Agency: ABLE Act Board	Contractor:
Name: Christina Elliott, Executive Director	Name:
Phone: (916) 653-2995	Phone:
Fax: (916) 653-3125	Fax:

7) Distribution/Ownership/Confidentiality of Data

The distribution of all data produced by the Contractor is restricted to the Board. This data becomes property of the Board, and the Board reserves exclusive rights to its further dissemination. In addition, Contractor shall keep confidential any information which identifies, or may identify, ABLE Act Program account holders.

8) Conflict of Interest

In the event that during the term of the agreement, the Contractor begins a contractual or other business relationship with any investment management services contractor that provides services for the Trust or any investment manager directing funds in the ABLE Act Program portfolio, either on its own or in partnership, with other entities, it shall provide prior notification to the Board. Should the Contractor begin such a relationship, the agreement may be terminated immediately by the Board on the ground of conflict of interest and any payments made subsequent to the creation of the conflict shall be disgorged by the agreement. Also, the Contractor may continue to perform and receive payment under this agreement only if the Board executes a written waiver of conflict, which waiver may not be given retroactive effect.

This section applies to any subcontractors the Contractor may utilize for this agreement. Ownership of an ABLE Act Program account does not constitute a business relationship for the purposes of this article.

9) Agreement Extension

The Board shall have the option to extend this agreement for up to one year. The Contractor will be evaluated based on the criteria outlined in Section 5 of this Exhibit A to determine the quality of work and if renewal of the agreement is warranted. The amendment to extend the agreement for up to one year will be subject to the approval of the Board and the Department of General Services.

If the agreement is extended for one year, all rates, as stated in Attachment B.1 (Cost Proposal), shall remain the same for the extension term. Travel costs for a one year extension are capped at \$10,000.

**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, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rate specified herein, which is attached hereto as Attachment B.1 and made part of this agreement. It shall be the State's sole determination as to whether services have been satisfactorily rendered. Travel costs are capped at \$10,000 per year. The rates for necessary traveling expenses and per diem shall be set in accordance with the rates of the California Department of Human Resources (CalHR) for comparable classes and no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

ABLE Act Board  
915 Capitol Mall, Room 110  
Sacramento, CA 95814  
Attention: Christina Elliott, Executive Director

In consideration for the satisfactory completion of the services described herein, the State agrees to pay Contractor, in arrears, upon receipt of an invoice, for services rendered under this Agreement. The invoice shall be submitted by Contractor in sufficient scope and detail to define the actual work performed, including a description of the activities of Contractor and subcontractors, if any, and the hours allocated to those activities. The hourly rate for services rendered shall not exceed those as set forth herein or as attached hereto.

**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 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.



**EXHIBIT C  
(Standard Agreement)**

**GENERAL TERMS AND CONDITIONS**

Exhibit C to this Agreement, the General Terms and Conditions (GTC-610), is hereby incorporated by reference and made part of this agreement as if attached hereto. The General Terms and Conditions can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

**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 6 of Exhibit A for purposes of resolving the dispute. The decision of the Deputy Treasurer shall be final.

**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.

**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

**EXHIBIT D  
(Standard Agreement)**

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 6 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 6 of Exhibit A.

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

**EXHIBIT D  
(Standard Agreement)**

**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 and incorporated herein. 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.

**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

**EXHIBIT D  
(Standard Agreement)**

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 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.

**EXHIBIT D  
(Standard Agreement)**

**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 (excluding any Request for Proposal (RFP) or Invitation for Bid (IFB) and Contractor's proposal or bid); (iii) RFP or IFB if any; (iv) Contractor's proposal or bid 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 thirty (30) 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 D**  
**(Standard Agreement)**

**35. 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.