

**CALIFORNIA DEPARTMENT OF TECHNOLOGY
OFFICE OF STATEWIDE PROJECT DELIVERY
STATEWIDE TECHNOLOGY PROCUREMENT**



INVITATION FOR BID, FTB 1920-00049

NOVEMBER 19, 2019

IBM SOFTWARE SUPPORT SERVICES

for the

FRANCHISE TAX BOARD (FTB)



**STATE OF CALIFORNIA
Franchise Tax Board**

INTRODUCTION

This solicitation is being conducted under the policies and procedures developed by the California Department of Technology (CDT) as provided under Public Contract Code (PCC) §12100 et seq. This solicitation contains the instructions governing the requirements for a fixed price to be submitted by interested bidders. The format that bid information is to be submitted and the material to be included herein follows. This solicitation also addresses the requirements that bidders must meet to be eligible for consideration.

The purpose of this Invitation for Bid, hereafter referred to as IFB, is to obtain bids from responsive, responsible bidders to provide IBM software subscription renewal and support services for the Franchise Tax Board, hereafter referred to as FTB. Contract Award, if made, will be to the responsive, responsible bidder offering the lowest net price, and meeting all requirements of this IFB.

****IMPORTANT SUPPLIER NOTE****

Bidders are encouraged to use the Department of General Services (DGS) e-Procurement system via the website to register to receive notifications of bidding opportunities as well as be able to track the progress of a current bid.

BIDDING STEPS

1. BID DELIVERY

Bidders are required to submit an electronic bid response to the following e-mail address: stp.ftb.ibm@state.ca.gov by the due date and time identified in this solicitation. Please maintain a record of your e-mailed response as proof of timely submittal. E-mails will be opened and reviewed during the evaluation phase.

KEY ACTION DATES

| | |
|--|--|
| Invitation for Bid (IFB) Release | 11/19/2019 |
| Last day to submit questions/request for changes | 11/25/2019 |
| Last day for State to respond to questions | 11/27/2019 |
| Last day to protest requirements | 12/02/2019 by 3:00 PM PST (via e-mail only) |
| Last Day to submit Final Bids | 12/04/2019 by 3:00 PM PST (via e-mail only) |
| Notice of Intent to Award | 12/11/2019 |
| Last Day to Protest Award | 12/13/2019 |
| Contract Award (estimated) | 12/16/2019 |

All dates after submission of Final bids are approximate and may be adjusted as conditions indicate without addendum to this solicitation.

2. AWARD OF CONTRACT

The selected bidder must be an IBM authorized reseller. The State will validate bidder responsiveness to this requirement directly with IBM prior to contract award.

Award of contract, if made, will be on the basis of "All or None" to the responsive, responsible bidder with the lowest net cost (excluding applicable sales tax) meeting all requirements of this IFB documents and any addenda thereto, except for such immaterial defects as may be waived by the State. Award, if made, will be made within forty-five (45) days after the scheduled date for contract award as specified in the IFB; however, a bidder may extend the offer beyond 45 days in the event of a delay of contract award.

3. TIE-BREAK PROCESS

In the event of a precise tie, the Procurement Official will conduct a witnessed coin flip. The Procurement Official will schedule and arrange for the coin flip and non-partisan witnesses; notifying the participating bidders of the outcome of the coin flip.

4. RESPONSIVE BIDDER

A supplier who provides a bid response that is compliant with solicitation requirements and indicates performance without material deviation from the terms and conditions of the proposed contract.

5. RESPONSIBLE BIDDER

A supplier who possesses the experience, facilities, reputation, financial resources and other factors existing at the time of contract award.

The State may require a bidder(s) to submit evidence of their qualifications at such times and under conditions, as it may deem necessary. The question of whether a particular bidder is a responsible bidder may involve an evaluation of the bidder's experience, type of facility, expertise or financial resources regarding the particular items requested by the pertinent solicitation. If a bidder has been determined to be non-responsible, the bid shall be rejected.

6. PROTESTS: ALTERNATIVE PROTEST PROCESS

This procurement is being conducted under the provisions of the Alternative Protest Process (Public Contract Code § 12125 et seq.) The bidder understands that by

submitting a bid to this procurement, the bidder consents to participation in the Alternative Protest Process, and agrees that all protests of the proposed award shall be resolved by binding arbitration pursuant to the California Code of Regulations, Title 1, Division 2, Chapter 5, Alternative Protest Process Procedures. Refer to **Attachment 12** for the Alternative Protest Process Procedures in their entirety.

A Notice of Intent to Award for this solicitation will be publicly posted on the 2nd floor Security Desk of the Department of Technology, 10860 Gold Center Drive, Rancho Cordova, CA 95670 and sent via email to any bidder who submits a written request for notice and provided an email address.

During the protest period, any bidder who submitted a final bid may protest the proposed award on the following grounds:

1. For major information technology acquisitions where there was a violation of the solicitation procedure(s) and that the protesting bidder's bid should have been selected; or
2. For any other acquisition where the protesting bidder's bid should have been selected in accordance with the selection criteria in the solicitation document.

A written Notice of intent to protest the proposed award of this solicitation must be received (email **is** acceptable, to the e-mail address: technologyprocurements@state.ca.gov) by the coordinator by the date and time specified in the KEY ACTION DATES. Failure to submit a timely, written notice of intent to protest waives bidder's right to protest.

Bidders may otherwise send a physical notice of intent to protest to:

| |
|--|
| Hand Delivered Bid; Parcel Post (FedEx, UPS, etc.) |
| Department of Technology Statewide Technology Procurement Attn: Alternative Protest Process Coordinator 10860 Gold Center Drive, Suite 200 – Security Desk Rancho Cordova, CA 95670 |
| United States Postal Service (USPS) |

Department of Technology
Statewide Technology Procurement
Attn: Alternative Protest Process Coordinator
Mail Stop Y12
P.O. Box 1810
Rancho Cordova, CA 95741-1810

Copies of the protest are to be sent to the Procurement Official.

Within seven (7) working days after the last day to submit a notice of intent to protest, the coordinator must receive from the protesting bidder the complete protest filing including the signed, written detailed statement of protest including exhibits, filing fee and deposit or small business certification as applicable. Untimely submission of the complete protest filing waives the bidder's right to protest.

Protest bond requirement: the bond amount for this Alternative Protest Process is ten percent (10%) of the estimated contract value. See California Code of Regulations, Title 1, §1418.

7. NEGOTIATIONS

The State of California reserves the right to negotiate. Should it be determined that it is in the State's best interest, the State will conduct negotiations under [PCC §6611](#). The purpose of the negotiation process is to maximize the State's ability to obtain a best value solution, based on the requirements and the evaluation factors set forth in the solicitation.

8. BID SUBMISSION INSTRUCTIONS

Bidders should be aware that marking the Bid with "confidential" or "proprietary" may exclude it from consideration for award.

Bids are to be sent electronically to the following address: stp.ftb.ibm@state.ca.gov

The subject line should read: "FTB1920-00049 Your Company's Name" Bids not received by the date and time specified in the Key Action Dates, will be rejected.

9. PROCUREMENT OFFICIAL

The Procurement Official is the state's designated authorized representative regarding this procurement.

Bidders are directed to communicate with the Procurement Official to submit questions, submit bids, and submit all other formal correspondence regarding this procurement.

Racine Meyers, Procurement Official
Phone: (916) 431-5554
Email: racine.meyers@state.ca.gov

10. QUESTIONS / REQUESTS FOR CHANGES TO SOLICITATION

Bidders requiring clarification of the intent, terms and conditions, content of this solicitation or on procedural matters regarding the competitive bid process may request clarification by submitting questions using **Attachment 1**, Template for Question Submittal, in an email (using the solicitation identification on the solicitation title page), to the Procurement Official listed above. To ensure a response, questions must be received in writing by the scheduled date(s) given in the Key Action Dates. Question and answer sets will be provided to all bidders without identifying the submitters. At the sole discretion of the State, questions may be paraphrased by the State for clarity.

A bidder who desires clarification or further information on the content of the solicitation, but whose questions relate to the proprietary aspect of that bidder's bid and which, if disclosed to other bidders, would expose that bidder's bid, may submit such questions in the same manner as above, but also marked "CONFIDENTIAL," and not later than the scheduled date specified in the KEY ACTION DATES to ensure a response. The bidder must explain why any questions are sensitive in nature. If the State concurs that the disclosure of the question or answer would expose the proprietary nature of the bid, the question will be answered and both the question and answer will be kept in confidence. If the State does not concur with the proprietary aspect of the question, the question will not be answered and the bidder will be so notified.

If the bidder believes that one or more of the solicitation requirements is onerous, unfair, or imposes unnecessary constraints to the bidder in proposing less costly or alternate solutions, the bidder may request a change to the solicitation by submitting, in writing, the recommended change(s) and the facts substantiating this belief and reasons for making the recommended change using **Attachment 2**, Template for Request for Changes. Such request must be submitted to the Procurement Official by the date specified in the KEY ACTION DATES for submitting a request for change. Oral responses shall not be binding on the state. Bidders must submit any request for changes, by the key action date.

11. BIDDER INSTRUCTIONS IF APPLICABLE

The Bidder Instructions applicable to this solicitation are located at the link below:
<http://www.documents.dgs.ca.gov/pd/modellang/GSPD451-110911.pdf>

12. INFORMATION TECHNOLOGY (IT) GENERAL PROVISIONS

The contract awarded as a result of this solicitation shall automatically incorporate by reference the GSPD – 401IT, General Provisions – Information Technology, which can be found at the following URL:

http://www.documents.dgs.ca.gov/pd/poliproc/GSPD401IT14_0905.pdf

13. CLOUD COMPUTING SPECIAL PROVISIONS IF APPLICABLE

If the bidder's solution includes commercial Software as a Service (SaaS) as part of the solution, the contract awarded, as a result of this solicitation shall automatically incorporate by reference the "State Model Cloud Computing Special Provisions for Software as a Service (SaaS)", which can be found at the following URL:

https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/CLOUDCOMPUTING_SaaS_GPs-ADA.pdf?la=en&hash=718FE3BFA75ABB6357016BB81BDACBC49D6BF376

**** IMPORTANT SUPPLIER NOTE****

Only bids on the State's own bid form will be considered. Bids submitted referencing supplier attachments, which include legal terms and conditions that conflict with the State's General Provisions **shall be** considered non-responsive and such bids may be rejected.

14. CONFIDENTIALITY STATEMENT

Bidders must agree to the State's confidentiality requirements by submitting a signed **Attachment 3**, Confidentiality Statement, for the bidder's firm. The completed confidentiality statement must be submitted with the bidder's response to this IFB.

The bidder engaging in services pertaining to this solicitation, requiring contact with confidential State information or State customer information will be required to exercise security precautions for all such data that is made available and must accept full legal responsibility for the protection of this confidential information. This includes all statistical, personal, technical and/or other confidential personal data and information relating to the State's operations that are designated confidential by the State.

The bidder will also be required, upon contract award, to submit a signed confidentiality statement from all personnel, agents, and subcontractors assigned to the awarded contract.

15. CALIFORNIA SELLER'S PERMIT

This bid is subject to all requirements set forth in §6452, §6487, §7101 and §18510 of the Revenue and Taxation Code, and §10295 of the Public Contract Code, requiring bidders to provide a copy of their retailer's seller's permit or certification of registration and, if applicable, the permit or certification of all participating affiliates issued by the State of California's Board of Equalization.

Bidders must complete and submit **Attachment 4**, Seller's Permit Certification. For more information on seller's permit or certification of registration, refer to the following links:

<https://www.cdtfa.ca.gov/formspubs/pubs.htm>

<https://www.cdtfa.ca.gov/formspubs/pub73.pdf>

16. PAYEE DATA RECORD

The Payee Data Record (STD.204) indicates the bidder is subject to state income tax withholdings pursuant to California Revenue and Taxation Code §18662.

Bidders must complete **Attachment 5**, Payee Data Record, and submit it with their bid. The bidder must provide the company's Federal Employer Identification Number (Business IRS Number) with their final bid submission on this form. The form can be located at the following website:

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

17. IRAN CONTRACTING ACT OF 2010

Division 2, Part 1, Chapter 2.7 of the PCC is the Iran Contracting Act of 2010. This Act §2203 requires that no one shall submit a bid for a contract, or enter into or renew a contract, with a public entity for goods or services valued at \$1,000,000 or more if that person (i.e., bidder or contractor) engages in investment activities of \$20,000,000 or more as described in PCC §2202.5 pursuant to all provisions of the Iran Contracting Act of 2010. The Iran Contracting Act of 2010, at §2204 requires bidders to certify at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of PCC §2203 as a person engaging in investment activities in Iran described in subdivision (a) of PCC §2202.5, or as a person described in subdivision (b) of PCC §2202.5, as applicable.

Bidders must complete **Attachment 6**, Iran Contracting Act of 2010, and submit with their final bid, and again each time their awarded contract is renewed.

18. BIDDER DECLARATION FORM

All bidders must complete **Attachment 7**, Bidder Declaration GSPD-05-105, and include it with the bid. When completing the declaration, the bidder must identify all subcontractors proposed for participation in the contract. The bidder awarded the contract is contractually obligated to use the subcontractors for the corresponding work identified, unless the Agency/State entity agrees to a substitution and it is incorporated, in writing. If the bidder is not using subcontractors, complete Attachment 7 answering the applicable questions and return with the final bid. The form is also available at:

www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf

PRIMARY BIDDER

An award, if made, will be to a primary bidder. The awarded primary bidder will be responsible for successful performance of all subcontractors and support services offered in response to this solicitation. All State policies, guidelines, and requirements that apply to the primary bidder also apply to subcontractors, as applicable to the products and services they provide and to their role as a subcontractor. Furthermore, the State will consider the primary bidder to be the sole point of contact regarding contractual matters for the term of the resulting contract. The bidder shall not assign financial documents to a third-party without prior written approval by the state, and an amendment to the resulting contract.

SUBCONTRACTORS

It is the bidder's responsibility to ensure any subcontractor that the bidder chooses to use in fulfilling the requirements of this solicitation, which is expected to receive more than ten percent (10%) of the value of the contract, must also meet all administrative, and bid requirements of the solicitation, as applicable to the services provided by the subcontractor.

Nothing contained in the resulting contract shall create any relationship between the State and any subcontractors, and no subcontract shall relieve the bidder of its responsibilities and obligations. The bidder is fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them.

The contractor shall not change subcontractor(s) and/or DVBE subcontractor(s) if such changes conflict with the work to be performed under this contract. For DVBE subcontractor changes, the contractor shall utilize another DVBE subcontractor. The State recognizes that changes to subcontractor(s) may be necessary and in the best interests of the state; however, advance notification of a contemplated change and the reasons for such change must be made to the State no less than seven (7) business days prior to the existing subcontractor's termination. If this should occur, the contractor should be aware that the State contract administrator

or designee must approve any changes to the subcontractor(s) prior to the termination of the existing subcontractor(s). This also includes any changes made between submittal of the Final Bid and actual start of the contract.

The bidder's obligation to pay its subcontracts is an independent obligation from the state's obligation to pay or to enforce the payment of any money to any subcontractor. Contractor is solely responsible for any payments to or claims made by subcontractors.

19. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PROGRAM

The Disabled Veteran Business Enterprise (DVBE) Participation Goal Program for State contracts are established in Public Contract Code (PCC), §10115 et seq., Military and Veterans Code (MVC), §999 et seq., and California Code of Regulations (CCR), Title 2, §1896.60 et seq.

PLEASE READ THESE REQUIREMENTS CAREFULLY.

DVBE Participation Requirement

For the purposes of this solicitation, the DVBE Participation Requirement has been waived, however, the DVBE Bid Incentive will still be applied.

DVBE Incentive

In accordance with §999.5(a) of the Military and Veterans Code, an incentive will be given to all bidders who provide DVBE participation. For contract award evaluation purposes only, the State shall apply an incentive to bids that propose California certified DVBE participation as identified in the Bidder Declarations GSPD-05-105 and confirmed by the State. The incentive amount for awards based on low price will be applied as follows:

| Confirmed DVBE Participation of: |
|---|
| 4.0% and Above |
| 3.0% to 3.9% |
| 2.0% to 2.9% |
| 1.0% to 1.9% |
| DVBE Incentive: |
| 5% |
| 3% |

| |
|----|
| 2% |
| 1% |

The net bid price of responsive bids will be reduced (for evaluation purposes only) by the amount of DVBE incentive as applied to the lowest responsive net bid price. If the #1 ranked responsive, responsible bid is a California certified small business, the only bidders eligible for the incentive will be California certified small businesses. The incentive adjustment for awards based on low price cannot exceed five percent (5%) or \$100,000, whichever is less, of the #1 ranked net bid price. When used in combination with a preference adjustment, the cumulative adjustment amount cannot exceed 15 percent (15%) or \$100,000, whichever is less.

Bidders claiming a DVBE incentive must complete and submit **Attachment 7**, GSPD-05-105 Bidder Declaration, **Attachment 8**, STD 843 DVBE Declaration and **Attachment 9**, Bidding Preferences and Incentives. If bidder is not using subcontractors, complete Attachment 7 answering the applicable questions and return with final bid.

20. SMALL BUSINESS PREFERENCES AND CERTIFICATION

§14835 et seq. of the California Government Code requires that a five percent (5%) preference be given to bidders who qualify as a small business. The maximum preference allowed for Small Business cannot exceed \$50,000 for any bid. In combination with any other preference (TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preference is fifteen percent (15%) of the bid amount and, in no case, shall be more than \$100,000.00 per bid, whichever is less. The rules and regulations of this law, including the definition of a small business, or qualifying non-small business, are contained in Title 2, California Code of Regulations, §1896 et seq. The definition of nonprofit veteran service agencies qualifying as a small business is contained in §999.50 et seq. of the Military and Veterans Code.

Bidders claiming the Small Business Preference must complete and submit **Attachment 9**, Bidding Preferences and Incentives and **Attachment 7**, GSPD-05-105 Bidder Declaration. If bidder is not using subcontractors, complete **Attachment 7** answering the applicable questions and return with the final bid.

21. NON-SMALL BUSINESS SUBCONTRACTOR PREFERENCE

A five percent (5%) bid preference is available to bidders who qualify as a non-small business claiming at least 25 percent (25%) California certified small business subcontractor participation. The maximum preference allowed for Small Business cannot exceed \$50,000 for any bid. In combination with any other preference

(TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preference is fifteen percent (15%) of the bid amount and, in no case, shall be more than \$100,000.00 per bid, whichever is less. If claiming the non-small business subcontractor preference, the bidder's response must include a list of the small businesses with which the firm commits to subcontract in an amount of at least 25 percent (25%) of the net bid price with one (1) 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 § 14838(b)(1)(2).

Bidders claiming the five percent (5%) preference must commit to subcontract at least 25 percent (25%) of the net bid price with one (1) or more California certified small businesses. Completed certification applications and required support documents must be submitted to the Office of Small Business and DVBE Services (OSDS) no later than 5 p.m. of the bid due date, and the OSDS must be able to approve the application as submitted. Questions regarding certification should be directed to the OSDS at (916) 375-4940.

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

If claiming a non-small business preference or using small business subcontractors, the bidder must complete and submit **Attachment 7**, GSPD-05-105 Bidder Declaration and **Attachment 9**, Bidding Preferences and Incentives. If bidder is not using subcontractors, complete **Attachment 7** answering the applicable questions and return with the final bid.

22. COMMERCIALLY USEFUL FUNCTION

All certified small business, micro business, and/or DVBE Contractors, subcontractors or suppliers must meet the commercially useful function requirements under Government Code Section 14837 (for SB), Military and Veterans Code Section 999 (for DVBE), and Title II California Code of Regulations, Section 1896.4 and 1896.62.

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor(s), or supplier's role is limited to that of an extra participant in the transaction, the awarded contract, or project through which funds are passed to obtain the appearance of small business or micro business participation.

Bidders must complete **Attachment 10**, Commercially Useful Function (CUF) Certification. All bidders and subcontractors identified in the bid response to fulfill the requirements for one (1) or more of the socio-economic programs (DVBE and small

business) must perform a commercially useful function (CUF) in the resulting contract. CUF is defined pursuant to Military and Veterans Code §999(b)(5)(B) and Government Code §14837(d)(4)(A) for the DVBE and small business programs, respectively.

Bidders claiming one (1) or more of the socio-economic programs must complete and submit as part of the final bid response, **Attachment 7**, GSPD-05-105 Bidder Declaration, also available at:

www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf

If bidder is not using subcontractors, complete **Attachment 7** answering the applicable questions and return with the final bid.

Bidder(s) may be required to submit additional written clarifying information regarding CUF on **Attachment 10**, Commercially Useful Function Certification. Failure to submit the requested written information as specified may be grounds for bid rejection.

23. TACPA PREFERENCE FORMS

Target Area Contract Preference Act (TACPA) will be granted to California-based firms in accordance with Government Code §4530 whenever contracts for goods or services are in excess of \$100,000 and the bidder meets certain requirements as defined in the California Administrative Code (Title 2, §1896.30 et seq.) regarding labor needed to produce the goods or provide the services being procured. The TACPA is optional on the part of the bidder (**not mandatory**), is for bid evaluation purposes only, and does not alter the amount of the awarded contract. The maximum preference allowed for TACPA is nine percent (9%) of the bid amount but not exceed \$50,000 for any bid. In combination with any other preference (TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preference is fifteen percent (15%) of the bid amount and, in no case, shall be more than \$100,000.00 per bid, whichever is less.

Bidders claiming TACPA are required to complete and submit the following applicable forms in addition to **Attachment 9**, Bidding Preferences and Incentives.

1. TACPA ([Std. 830](#))
2. Manufacturer Summary of Contract Activities and Labor Hours ([DGS/PD 525](#))
3. Bidder's Summary of Contract Activities and Labor Hours ([DGS/PD 526](#))

24. EVALUATION

Award, if made, will be on the basis of all or none and will be to the responsive and responsible supplier with the lowest net cost.

All cost worksheets within Exhibit 2 must be filled out per the instructions. The Evaluated Grand Total on the summary worksheet will be used for evaluation purposes.

Any preferences and incentive will be calculated based on the lowest responsible and responsive net bid amount. Preference and incentive amounts will be applied in the following order:

- California Small Business Preference
- DVBE Incentive
- TACPA Preference

Final selection will be on the basis of a complete evaluation of the bid requirements, and cost. Award, if made, will be on the basis of all or none and will be to the responsive and responsible supplier with the lowest net cost.

25. EXHIBITS

A. EXHIBIT 1 - STATEMENT OF WORK

The attached Statement of Work (SOW), consisting of 2 pages and is part of this solicitation.

The SOW identifies and describes the tasks and responsibilities of the contractor and the responsibilities of the State during the configuration, implementation, and operations of the awarded contract. The bidder must submit the SOW as **Exhibit 1** of the final bid response. Bidders are advised that deviations to the SOW may be grounds for rejection of their final bid.

B. EXHIBIT 2 - COST WORKSHEET

Cost is the primary evaluation criterion. All bid costs for all line items must be all inclusive of any and all services required in this solicitation.

Bidders are advised that failure to comply with the instructions listed in this section, such as submission of incomplete bids or use of alternative pricing structures or different formats than the one requested, may result in the rejection of their bids.

Bidders must complete the Cost Worksheet, **Exhibit 2**, by providing pricing for all cost cells contained therein (e.g. Annual Unit Price) and by ensuring that all pricing provided is correct (e.g. Extended Pricing, and Totals). The cost worksheets must be filled out completely or the bid may be rejected.

26. ATTACHMENTS

The following documents are attached, or attached by reference, and part of this solicitation:

1. Attachment 1: Template for Question Submittal
2. Attachment 2: Template for Request for Changes Submittal
3. Attachment 3: Confidentiality Statement
4. Attachment 4: Seller's Permit Certification*
5. Attachment 5: Payee Data Record, STD. 204*
6. Attachment 6: Iran Contracting Act of 2010
7. Attachment 7: Bidder Declaration Form*
8. Attachment 8: DVBE Declaration*
9. Attachment 9: Bidding Preferences and Incentives
10. Attachment 10: Commercially Useful Function (CUF) Certification
11. Attachment 11: TACPA Preference Forms*
12. Attachment 12: California Code of Regulations, Title 1, Division 2, Chapter 5, Alternative Protest Process Procedures

* These documents are incorporated by reference and located at the link provided within this solicitation.

****IMPORTANT SUPPLIER NOTE****

Attachments #3, #4, #5, #6, #7, #9, and #10 MUST be submitted with the bid response.

Attachments #8 and #11 MUST be submitted with bid response if applicable.

Attachment 12 is information only.

EXHIBIT 1 – STATEMENT OF WORK (SOW)

This Statement of Work ("Agreement") reflects the services to be provided by (Contractor Name), hereinafter referred to as the "Contractor," for the Franchise Tax Board, and hereinafter referred to as the "State".

1.1 Proposed Project Scope

The Contractor will provide twelve (12) months of software support for IBM software products licensed to the State under IBM Renewal Site Numbers 7105363 and 3997709. See Exhibit 2, Cost Worksheet for a complete listing of software to be covered under this IFB.

1.2 Contractor Responsibilities

The Contractor will provide support for the following activities:

- Software upgrade and technical support solution, IBM Software Subscription and Support, available through IBM Passport Advantage site number 7105363 and 3997709.
- Download access to fixes, feature packs, new releases and new versions of State's licensed software —via Passport Advantage Online.
- Software upgrades that ensure performance, security, usability and enhancements built into the licensed software.
- 24x7 help via IBM Support to answer deployment, migration, troubleshooting, and code questions.
- Access to Knowledge Centers, forums, Redbooks, Technotes, tools.
- Online access to create, view, and update Service Requests and PMRs.
- Timely resolution to issues reported by the State.

All software updates, upgrades, patches or fixes are to be sent to the State's email address at:

SwMgmt@ftb.ca.gov

IBM will also provide the following services, as needed, in support of the software products:

Analytical Services:

IBM will furnish the following services to the State on an as needed basis:

- IBM Unified Governance & Integration (UGI) Services
- Hybrid Data Management (HDM) Services.

These are remotely delivered flexible service hours that can be used towards analytics needed in conjunction with the software products licensed to the State under this agreement. Some of the UGI/HDM projects include IBM Data Replication (IDR), Master Data Management (MDM), InfoSphere Information Server Enterprise Edition (IISEE), InfoSphere Identity Insight, DB2, MongoDB, as well as other analytics projects that may arise. The State will manage and prioritize any software analytics needed, and will submit documents to IBM when and where staff augmentation is needed to meet business objectives.

The following outlines the recommended activities by software product:

IBM Data Replication (IDR)

- Review of business and system requirements, and selection of data sources
- Install and configure IDR in a development or test environment
- Perform replication for a defined set of tables
- Validate replication
- Perform system administration hand-off

IBM Master Data Management (MDM)

- Upgrade and/or configure MDM components
- Upgrade Inspector and Web Reports
- Upgrade Event Notification Services
- Support State efforts to upgrade/configure web services
- Deploy the solution to production
- Participate in Information Sharing sessions of the solution to client support contacts

IBM InfoSphere Information Server Enterprise Edition (IISEE)

- Data Governance; pilot business use-case discovery
- Data Governance; pilot solution design and build
- IISEE checkpoint assessment (health check)
- Upgrade and/or migration services

IBM InfoSphere Identity Insight

- Design engagement
- Solution planning
- Pilot project development and evaluation of software solution

Database Management

- DB2 checkpoint assessment (health check)
- DB2 Tooling, Big SQL, and advanced DB2 configuration
- MongoDB; pilot solution design and build
- Upgrade and/or migration service

Other

- Discovery and design workshops
- Use-case development
- Pilot project planning and development

1.3 State Responsibilities

The State shall undertake the following activities:

- Install patches and upgrades in State environments in accordance with State maintenance and operations plans.
- Report issues via online reporting tools.

IBM Website for Service Requests and Problem Management Records (PMRs):

<https://www-947.ibm.com/account/userservices/jsp/login>

Or Call:

[1800-IBM-SERV](tel:1800-IBM-SERV)

1.4 Period of Performance

The term of this Agreement will be effective upon the Agreement start date of 1/1/2020 or upon approval by the California Department of Technology, Office of Statewide Project Delivery, Statewide Technology Procurement, whichever is later, through a period of 12 months.

1.5 Termination

The State shall have the right to terminate maintenance at no expense to the State upon delivery of written notice at least thirty (30) calendar days prior to any scheduled renewal date.

EXHIBIT 2 – COST WORKSHEETS

2.1 Cost Worksheet:

Bidders must complete the attached **Exhibit 2** - Cost Worksheet by providing pricing for all cost cells contained therein (e.g. Annual Unit Price) and by ensuring that all pricing provided is correct (e.g. Extended Pricing, and Totals). Award if made will be to the lowest responsive and responsible bidder.

2.2 Payment Provisions:

The State shall pay the awarded contractor upon acceptance of the delivered/received items covered in **Exhibit 2** - Cost Worksheet upon receipt of an undisputed itemized invoice submitted by the contractor, in triplicate to:

Franchise Tax Board
ATTN: Fiscal Accounting
PO Box 2800
Sacramento, CA 95812-2800

Software maintenance shall be paid annually, in advance, upon each term start date(s).

2.3 IBM Contact Information:

Bidders are encouraged to contact IBM Sales Representative, Kevin Munoz at klmunoz@us.ibm.com for assistance or to obtain pricing information for this IFB.

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EXHIBIT 3 – FRANCHISE TAX BOARD SPECIAL PROVISIONS

A. CONFIDENTIALITY OF DATA

Any data or information, which the State identifies to the Contractor to be confidential, will be treated in the following manner:

1. Any employee, agent or representative of the Contractor whose duties require access to such data or information, or to any equipment or device which contains such data or information, may be required to sign a Confidentiality Statement (FTB Form 7904 or FTB Form 7912, or both).
2. When Contractor exercises the option to replace defective parts of any equipment or device containing confidential data, Contractor will certify to the State that all such data contained therein has been destroyed and is no longer readable. Any hard copy printouts created during testing or servicing of equipment or devices, which disclose any confidential data or information will be destroyed by the Contractor in accordance with Internal Revenue Service specifications, or will be given to the State for proper disposal.

B. BACKGROUND CHECK, FINGERPRINTING, AND TAX COMPLIANCE OF CONTRACTOR PERSONNEL

FTB will investigate the personal history of all Contractor personnel who will have access to FTB's facilities, data systems or confidential materials during the term of the contract. FTB will require such Contractors, subcontractors, independent Contractors, and their employees to complete a Personal History Statement and be fingerprinted. Fingerprints will be sent to the California Department of Justice for information regarding prior criminal history. Based upon the results, FTB reserves the right to prohibit individuals from performing work under this contract.

As part of the background check, FTB may require tax identification information to validate compliance with the California Revenue and Taxation Code throughout the term of the contract. Compliance with the Revenue and Taxation Code means an individual has filed all required state income tax returns, and all state income taxes are paid or a current payment installment agreement is in place. Prospective contract staff are encouraged to call 1-800-852-5711 to verify their individual filing status and resolve any potential tax compliance issues.

If a member of the Contractor's staff or subcontractor staff (including replacements) is ineligible to work for FTB, the Contractor will be notified. If the Contractor is unable to provide an eligible replacement, per the terms of this contract, it may be deemed a breach of this contract and may be grounds for termination of this contract.

C. GENERAL ACCESSIBILITY REQUIREMENTS

1. Contractor shall ensure and warrants that all products and services consisting of or utilizing electronic, information or communication technology (EICT), including but not limited to software and web-based applications, meet the applicable requirements of each of the following statutes, regulations, standards, guidelines and policies ("Requirements"):
 - a. California Government Code (Cal. Gov. Code) Section 11135, which prohibits discrimination on the basis of physical or mental disability and other grounds;
 - b. Section 202 of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12132, et seq.), and the federal rules and regulations adopted in implementation thereof, which are incorporated in California law by Cal. Gov. Code Section 11135;
 - c. Cal. Gov. Code Section 7405, which:
 - i. Incorporates in California law Section 508 of the Rehabilitation Act of 1973, as amended [29 United States Code (USC) Sec. 794d], and implementing regulations, as set forth in 36 Code of Federal Regulations (CFR) Part 1194 and
 - ii. Requires Contractors with state governmental entities subject to Cal. Gov. Code Section 11135 to respond to and resolve complaints regarding accessibility of its EICT products and related services;
 - d. To the extent any telecommunications products or services are provided under the contract, 47 USC Section 255 and related regulations, including:
 - i. 47 CFR Parts 6, 7, 14 and (if real-time text functionality is provided) 67, and
 - ii. 36 CFR Part 1193, to the extent it remains in effect;
 - e. California Fair Employment and Housing Act (Cal. Gov. Code sections 12900-12951 & 12960-12976);
 - f. Unruh Civil Rights Act (California Civil Code section 51);
 - g. Disabled Persons Act (California Civil Code sections 54-54.1);
 - h. Cal. Gov. Code sections 19230-19237;
 - i. Web Content Accessibility Guidelines (WCAG) 2.1 Levels A and AA;
 - j. WCAG 1.0 Level AA, to the extent these guidelines include additional requirements that are not included in and are not inconsistent with WCAG 2.1 Levels A and AA;
 - k. State Administrative Manual (SAM) Section 4833;

1. State Information Management Manual (SIMM) Section 25.
2. Contractor shall ensure that its products and services maintain or enhance, and do not diminish, the net accessibility, usability and compatibility of FTB's existing environment and applications.
3. All documentation, user guides, training materials and services, and challenge response password and other identity-verification systems must meet the Requirements. The Contractor shall ensure that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including information accessible features), and technical support which is provided to individuals without disabilities.
4. All subsequent updates, upgrades, bug-fixes and patches provided pursuant to the contract shall meet the Requirements.
5. In accordance with Cal. Gov. Code section 7405(b), the Contractor shall have an ongoing obligation to promptly respond to and resolve any complaint regarding accessibility of its EICT products and services that is brought to the attention of the Contractor, to the satisfaction of the State.
6. A failure to meet any of the Requirements may result in rejection of the product or services by FTB, withholding of payment, a complaint filed with California Department of Fair Employment and Housing (DFEH), a civil action, or other remedies, including, but not limited to, those provided in Cal. Gov. Code sections 11136 – 11139 and 12930, and GSPD-401IT.
7. In the event of a conflict between accessibility standards, the highest standard will apply.

D. FTB CENTRAL OFFICE WORKSITE POLICIES

1. Badges

FTB issues a security identification badge (badge) to all persons who enter the central office campus secure buildings. The badge serves as a means of identification and/or a means of gaining authorized access to the facility. Badges allow access with allowances or restrictions for specific locations, days and times.

The Worksite Security Section of FTB will arrange for the Contractor's staff assigned to FTB to be issued a non-employees badge. The assigned Contractor's staff will be required to complete and pass a California Department of Justice criminal history background check. The Contractor's staff must present their badge at the access point using the electronic badge reader to enter the

facility. The Contractor's staff must wear the badge on their front torso at all times while on the premises.

The photograph must be easily visible and presented to security officers or authorized management upon request. If the badge is lost, misplaced or stolen, the Contractor's staff must notify FTB staff, who will work with the Contractor's staff to get a new badge issued.

If the Contractor's staff does not have their badge, they can report to the security office reception station in the Lobby, and Worksite Security can issue a temporary badge. The temporary badge is issued and active for one day only. The permanent badge is disabled until the Contractor's staff returns both the temporary and permanent badge to the security office reception station in the Lobby, at which time the permanent badge will be re-enabled for access permissions.

Badges are the property of the department. The badge must be surrendered if the Contractor's staff is no longer assigned to FTB.

Security officers will request individuals within the FTB central office campus who do not have a visible badge to present it immediately. The security officer will direct or escort non-employees to the lobby to contact the host/sponsor to obtain an authorized badge. If a Contractor staff member does not have an assigned badge and is required to come on-site, they must arrange with the Worksite Security Section to have a visitor badge issued and must be escorted.

2. Parking

All persons driving on FTB's premises are expected at all times to obey our traffic and parking policies and rules, as well as all applicable provisions of the California Vehicle Code.

Do not park in numbered, reserved or handicap spaces. Worksite Security Services is responsible for traffic management and parking enforcement services at the central office campus. Driving and parking on our premises is a privilege, not a right.

Violations of our policies and/or California Vehicle Code provisions on our property may result in a local law enforcement, California Highway Patrol or

private security citation, and/or towing directed by the California Highway Patrol.

E. INSURANCE REQUIREMENTS

1. General Requirements

If self-insured, review of financial information may be required. Coverage needs to be in force for complete term of Contract. If insurance expires during the term of the Contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of the original Contract.

In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate the Contract upon the occurrence of such event, subject to the provisions of the Contract.

Insurance policies shall contain a provision that states that coverage will not be cancelled without 30 days prior written notification to the State. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the State.

2. Commercial General Liability

Contractor shall maintain general liability with limits of not less than \$1,000,000.00 per occurrence for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent Contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include the State of California, its officers, agents, employees and servants as additional insured, but only insofar as the operations under the Contract are concerned.

3. Workers' Compensation/Employer's Liability

Contractor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000.00 shall be required.

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ATTACHMENT 1: TEMPLATE FOR QUESTION SUBMITTAL

Bidders are requested to use this form when submitting questions to the Procurement Official. Instructions are as follows:

Name of Bidder – Provide the name of the Bidding firm.

Contact Person – Provide the name of the person to contact if the State needs clarification about the question.

Contact Email and Phone # – Provide the email and phone number (including area code) for the listed contact person.

Q # – Sequentially number each question, always starting at one (1) for each submission.

Section/Document(s) – Identify the section or document the request pertains to, such as "Sales Tax section in IFB".

Page # – Identify the page number of the section/document name or title the question pertains to.

Question – Write the question in this column.

Expand or reduce the number of rows to accommodate the number of questions.

Table-1 Question Submittal Form

Name of Bidder:

Contact Person:

Contact Email and Phone Number:

| Q # | Section/Document(s) | Page # | Question |
|-----|---------------------|--------|----------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

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ATTACHMENT 2: TEMPLATE FOR REQUEST FOR CHANGES SUBMITTAL

Bidders are requested to use this form when submitting request for changes to the Procurement Official. Instructions are as follows:

Name of Bidder – Provide the name of the Bidding firm.

Contact Person – Provide the name of the person to contact if the State needs clarification about the request for change.

Contact Email and Phone # – Provide the email and phone number (including area code) for the listed contact person.

Ch # – Sequentially number each change, always starting with number 1 for each request.

Section/Document(s) – Identify the section or document the request pertains to, such as "Sales Tax section in IFB."

Page # – Identify the page number the change pertains to.

Proposed Change – Write the requested change in this column. The Bidder shall apply tracked changes to ensure the change is evident.

Bidder's Rationale – Provide explanation or the motivation for the requested change. Expand or reduce the number of rows to accommodate the number of questions.

Table-1 IFB Bidder Request for Change Form

Name of Bidder:

Contact Person:

Contact Email and Phone Number:

| Ch # | Section/Document(s) | Page # | Proposed Change (in tracked changes) | Bidder's Rationale |
|------|---------------------|--------|--------------------------------------|--------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

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ATTACHMENT 3: CONFIDENTIALITY STATEMENT

As an authorized representative or corporate officer of the company name below, I have the authority to bind the company contractually, and I agree that all persons employed by this company will adhere to the following policy:

All information belonging to the Department of Technology or its affiliated agencies is considered sensitive and confidential and cannot be disclosed to any person or entity that is not directly approved to participate in the work required to execute this Agreement.

I certify that I will keep all project information; including, but not limited to, information concerning the planning, processes, development or procedures of the project, and all communication with Department of Technology or its affiliates derivative of any procurement process, confidential and secure. I will not copy, give or otherwise disclose such information to any other person unless the Department of Technology has on file a Confidentiality Statement signed by the other person(s), and the disclosure is authorized and necessary for the project. I understand that the information to be kept confidential includes, but is not limited to, specifications, administrative requirements, terms and conditions, concepts and discussions, as well as written and electronic materials. I further understand that if I leave this project before it ends, I must still keep all project information confidential. I agree to follow any instructions provided by the project relating to the confidentiality of project information.

I fully understand that any unauthorized disclosure I make may be basis for civil or criminal penalties. I agree to advise the contract manager immediately in the event of an unauthorized disclosure, inappropriate access, misuse, theft or loss of data. I warrant that if my company is awarded the contract, it will not enter into any agreements or discussions with a third party concerning such materials prior to receiving written confirmation from the State that such third party has an agreement with the State similar in nature to this one.

All materials provided for this project, except where explicitly stated will be promptly returned or destroyed, as instructed by an authorized Department of Technology representative. If the materials are destroyed and not returned, a letter attesting to their complete destruction which documents the destruction procedures must be sent to the contract manager before payment can be made for services rendered. In addition, all copies or derivations, including any working or archival backups of the information, will be physically and/or electronically destroyed within five (5) calendar days immediately following either the end of the contract period or the final payment, as determined by the contracting department.

All personnel assigned to this project shall be provided a Confidentiality Statement and will be expected to sign and return it to the state's project manager before beginning work on this project.

Representative Name:

Representative Title:

Representative Phone Number:

Company Name:

Company Address:

City:

State:

Zip Code:

Signature:

Date:

ATTACHMENT 4: SELLER'S PERMIT CERTIFICATION

ATTACH A COPY OF CALIFORNIA SELLER'S PERMIT HERE.

For more information on seller's permit or certification of registration, refer to the following links:

<https://www.cdfta.ca.gov/formspubs/pubs.htm>

<https://www.cdfta.ca.gov/formspubs/pub73.pdf>

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ATTACHMENT 5: PAYEE DATA RECORD

ATTACH A COPY OF STD. 204, PAYEE DATA RECORD HERE.

Refer to the following website link to obtain the appropriate form. Payee Data Record (STD 204) for information: <http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf>

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ATTACHMENT 6: IRAN CONTRACTING ACT OF 2010

IRAN CONTRACTING ACT (Public Contract Code § 2202-2208)

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

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law (Public Contract Code § 2205) establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts.

OPTION #1 - CERTIFICATION

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

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

ATTACHMENT 6: IRAN CONTRACTING ACT OF 2010, (Cont.)

OPTION #2 – EXEMPTION

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

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

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

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ATTACHMENT 7: GSPD 05-105 BIDDER DECLARATION

A copy of the *GSPD-05-105 Bidder Declaration* and its instructions is available as a fill and print PDF at:

www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf

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ATTACHMENT 8: DVBE DECLARATIONS

A copy of the STD. 843, Disabled Veteran Business Enterprise Declarations and its instructions is available as a fill and print PDF at:

https://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_843.pdf

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ATTACHMENT 9: BIDDING PREFERENCES AND INCENTIVES

ALL BIDDERS: COMPLETE ALL SECTIONS BELOW AND SUBMIT WITH YOUR BID.

1. SMALL BUSINESS PREFERENCE:

Bidder must check the appropriate box from the choices below.

- ☐ I am a DGS certified Small Business and claim the Small Business Preference. My DGS Small Business certification number is: _____
- ☐ I have recently filed for DGS Small Business preference but have not yet received certification, but I am claiming the Small Business preference.
- ☐ I am not a DGS certified Small Business, but 25% or more of the revenue from the award will go to DGS certified Small Business Subcontractors performing a Commercially Useful Function and; therefore, I am claiming the preference.

Bidder must complete and submit Attachment 7: GSPD-05-105 Bidder Declaration, indicating the percentage of the revenue that will be received by each DGS certified Small Business Subcontractor. The form can also be found at the following link:

<https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf>

- ☐ I am not claiming the DGS Small Business preference.

2. DVBE INCENTIVE:

Bidder must check the appropriate box from the choices below.

- ☐ I am a DGS certified DVBE. A copy of my STD. 843 form is attached.
- ☐ I have recently filed for DGS DVBE certification, but have not yet received certification.
- ☐ I am not a DGS certified DVBE, but a percentage of the revenue will be going to DGS certified DVBE Subcontractors performing a Commercially Useful Function, and therefore, I am claiming the DVBE incentive.

Bidder must submit a complete Attachment 7: GSPD-05-105, Bidder Declaration, indicating the percentage of the revenue that will be received by each DGS certified DVBE Subcontractor. Bidder must also submit an Attachment 8, STD 843 DVBE Declarations, for each DVBE Subcontractor, signed by the DVBE owner/manager. The form can be found on the following link:

https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_843.pdf

- ☐ I am not claiming the DVBE incentive.

ATTACHMENT 9: BIDDING PREFERENCES AND INCENTIVES, (Cont.)

3. ADDITIONAL BIDDING PREFERENCES:

The Bidder shall check the appropriate box or boxes from the choices below.

- ☐ I am not claiming the TACPA preference
- ☐ I am claiming the TACPA bidding preference.
Bidder must submit Attachment 11: STD 830 TACPA Preference Request

Bidder Name:

Bidder Signature:

Date:

ATTACHMENT 10: COMMERCIALLY USEFUL FUNCTION (CUF) CERTIFICATION

Bidder Name: _____

Subcontractor Name _____

(Submit one form for each SB/DVBE)

Mark all that apply: DVBE: ☐ Small Business: ☐ Micro Business: ☐ N/A: ☐

All certified small business (SB), micro business (MB), and/or DVBE contractors, subcontractors or suppliers must meet the commercially useful function requirements under Government Code Section 14837 (for SB), Military and Veterans Code Section 999 (for DVBE), and Title II California Code of Regulations, Section 1896.4 and 1896.62.

Answer questions 1-5 below, as they apply to your company for the goods and/or services being acquired in this solicitation. A California certified SB, MB, or DVBE business must be deemed to perform a Commercially Useful Function (CUF) by meeting **ALL** of the following CUF requirements for contract/purchase order (PO) award consideration.

| | | | |
|----|--|------------------------------|---|
| 1. | Is responsible for the execution of a distinct element of the resulting Contract. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. | Carries out its obligation by actually performing, managing, or supervising the work involved. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. | Performs work that is normal for its business services and functions. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. | Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment. If this is a SERVICE with NO goods involved, check N/A and go to #5. | Yes <input type="checkbox"/> | No <input type="checkbox"/> or N/A <input type="checkbox"/> |
| 5. | Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

If the answer to any of the five (5) questions is "NO" except for #4 when marked with "N/A", may result in your bid being deemed non-responsive.

The bidder must provide a written statement below detailing the role, services and goods the subcontractor(s) will provide to meet the commercially useful function requirement. If the bidder is not claiming a SB or DVBE, indicate "Not claiming a preference" in the box below.

At the state's option prior to award, bidders may be required to submit additional written clarifying information.

ATTACHMENT 10: CUF CERTIFICATION, (Cont.)

By signing this form, the undersigned bidder certifies that the Certified SB or DVBE satisfies the Commercially Useful Function requirement, and will provide the role, services, and/or goods stated above.

Bidder Signature: _____

Printed/Typed Name: _____ Date: _____

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ATTACHMENT 11: STD 830 TACPA PREFERENCE REQUEST

A copy of the *STD 830 TACPA Preference Request* and its instructions is available as a fill and print PDF at: <http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std830.pdf>

Bidders wishing to take advantage of this preference are required to submit the following applications or forms:

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

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ATTACHMENT 12: CALIFORNIA CODE OF REGULATIONS
TITLE 1, DIVISION 2
CHAPTER 5, ALTERNATIVE PROTEST PROCESS PROCEDURES

(This attachment is not required to be submitted with your solicitation response.)

California Code of Regulations, Title 1, Division 2

Chapter 5. Procedures for Conducting Protests under the Alternative Protest Process

Article 1. General Provisions

§1400. Purpose; Scope of Chapter.

Protests under the Alternative Protest Pilot Project (AB 1159, Chapter 762 of 1997 Statutes, Public Contract Code Division 2, Part 2, Chapter 3.6 (Sections 12125-12130)) shall be resolved by arbitration as defined and established by this chapter.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Chapter 5 (Articles 1-3), Article 1 (Sections 1400-1404) and Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1402. Definitions.

- (a) Arbitration, as used in this chapter, means a dispute resolution procedure in which the Department of General Services, Office of Administrative Hearings provides a neutral third party who decides the merits of a protest and issues a binding decision to the Parties.
- (b) Awardee includes Proposed Awardee and means the person or entity that was a successful Bidder to a Solicitation and has been, or is intended to be, awarded the contract.
- (c) Close of Business, as used in this chapter, means 5 p.m. Pacific Standard Time (PST) or Pacific Daylight Time (PDT), as applicable.
- (d) Contracting Department means either Procurement or the department which has applied and been approved by the Department of General Services to conduct the Solicitation under the Alternative Protest Pilot Project (Public Contract Code Sections 12125-12130.).
- (e) Coordinator means the person designated as the Alternative Protest Pilot Project Coordinator by the Department of General Services, Procurement Division, to coordinate all aspects of the Solicitation under the Alternative Protest Pilot Project (Public Contract Code Sections 12125-12130).
- (f) Estimated Contract Value means the value of Protestant's bid.
- (g) Frivolous means a protest with any or all of the following characteristics:
 - (1) It is wholly without merit.
 - (2) It is insufficient on its face.

(3) The Protestant has not submitted a rational argument based upon the evidence or law which supports the protest.

(4) The protest is based on grounds other than those specified in Section 1410.

(h) Major Information Technology Acquisition means the purchase of goods or services, or both, by a State agency, through contract, from non-governmental sources, that has significant mission criticality, risk, impact, complexity, or value attributes or characteristics. Pursuant to subdivision (e) of Section 11702 of the Government Code, these purchases shall include, but not be limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

(i) OAH means the Department of General Services, Office of Administrative Hearings.

(j) Party means the Procurement Division of the Department of General Services, the Contracting Department, the Awardee, and Protestant(s).

(k) Procurement means the Procurement Division of the Department of General Services.

(l) Protestant means a person or entity that was an unsuccessful Bidder to a Solicitation under the Alternative Protest Pilot Project (Public Contract Code Sections 12125-12130) and that protests the award.

(m) Small Business means a Certified California Small Business, pursuant to Government Code Division 3, Part 5.5, Chapter 6.5 (commencing with Section 14835) and Title 2, California Code of Regulations, Section 1896.

(n) Solicitation means the document that describes the goods or services to be purchased, details the contract terms and conditions under which the goods or services are to be purchased, and establishes the method of evaluation and selection.

(o) Solicitation File means the Solicitation and the documents used by the Contracting Department in the Solicitation process, including documents used to evaluate Bidders and select a Proposed Awardee. The Solicitation File shall remain available to the public except information that is confidential or proprietary.

Authority cited: Section 12126, Public Contract Code. Reference: Section 11702, Government Code; and Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1404. Notice of Intent to Award Contract.

The Contracting Department shall post a Notice of Intent to Award Contract in a public place specified in the Solicitation, send rejection facsimiles to rejected Bidders, and send Notice of Intent to Award Contract facsimiles to any Bidder who made a written request for notice and provided a facsimile number. The Contracting Department shall indicate that the Solicitation File is available for inspection. The Contracting Department has the discretion to award a contract immediately, upon approval by the Director of the Department of General Services and, if the Solicitation was for a Major Information Technology Acquisition, the Director of the Department of Information Technology.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

Article 2. Protest Procedure

§1406. Notice of Intent to Protest; Service List.

(a) An unsuccessful Bidder who intends to protest the awarded contract pursuant to this chapter must inform the Coordinator. The Notice of Intent to Protest must be in writing and must reach the Coordinator within the number of days specified in the Solicitation, which shall be not less than 1 working day and not more than 5 working days after the posting of the Notice of Intent to Award Contract, as specified in the Solicitation. Failure to give written notice by Close of Business on that day shall waive the right to protest.

(b) On the day after the final day to submit a Notice of Intent to Protest, the Coordinator shall make a service list consisting of those Bidders who did submit a Notice of Intent to Protest, the Awardee, and the Contracting Department. The Coordinator shall include addresses and facsimile numbers on this list and shall forward this service list to those Bidders who submitted a Notice of Intent to Protest.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Article 2 (sections 1406-1418) and Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1408. Filing a Protest.

(a) A protest is filed by the submission of: the Detailed Written Statement of Protest and any exhibits specified in Section 1412; a check or money order made payable to the Office of Administrative Hearings for the OAH filing fee of \$50; and the arbitration deposit as specified in subsection (c) or (d) to the Coordinator by the Close of Business on the 7th working day after the time specified in the Solicitation for written Notice of Intent to Protest under Section 1406. A copy of the Detailed Written Statement of Protest and exhibits must also

be served on all Parties named in the service list as specified in Section 1406. A Protestant who fails to comply with this subsection waives Protestant's right to protest.

(b) Protestant(s) must provide a FAX (facsimile) number. Notification by facsimile is sufficient for service. If the Detailed Written Statement of Protest is sent to the Coordinator by facsimile, Protestant must:

(1) Verify that the pages sent were all received by the Coordinator; and
(2) Remit the required deposit and filing fee to Coordinator by any reasonable means. If sending via carrier, the postmark date or equivalent shall be used to determine timeliness.

(c) Each Protestant not certified as a Small Business shall make a deposit of the estimated arbitration costs, by check or money order made payable to the Office of Administrative Hearings, as determined by the Estimated Contract Value.

(1) For contracts up to \$100,000.00, the deposit shall be \$1500.00.

(2) For contracts of \$100,000.00 up to \$250,000.00, the deposit shall be \$3,000.00.

(3) For contracts of \$250,000.00 up to \$500,000.00, the deposit shall be \$5,000.00.

(4) For contracts of \$500,000.00 and above, the deposit shall be \$7,000.00.

(5) Failure to remit a timely required deposit waives the right of protest.

(6) Any refund to Protestant(s) shall be made per Section 1436.

(d) Each Protestant certified as a Small Business shall submit a copy of the Small Business Certification in lieu of the deposit specified in subsection (c). If Protestant is a Small Business and the protest is denied by the arbitrator, the Contracting Department shall collect the costs of the arbitration from Protestant. If Protestant does not remit the costs due, the Contracting Department may offset any unpaid arbitration costs from other contracts with Protestant and/or may declare Protestant to be a non-responsible Bidder on subsequent solicitations.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1410. Grounds for Protest.

(a) The Public Contract Code, at Section 12126(d) provides: Authority to protest under this chapter shall be limited to participating Bidders.

(1) Grounds for Major Information Technology Acquisition protests shall be limited to violations of the Solicitation procedures and that the Protestant should have been selected.

(2) Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the Solicitation document.

(b) The burden of proof for protests filed under this chapter is preponderance of the evidence, and Protestant(s) must bear this burden.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1412. Detailed Written Statement of Protest.

(a) The Detailed Written Statement of Protest must include the grounds upon which the protest is made, as specified in 1410(a).

(b) The Detailed Written Statement of Protest shall contain reasons why Protestant should have been awarded the contract.

(1) For Major Information Technology Acquisition protests, the Detailed Written Statement of Protest must specify each and every Solicitation procedure which was violated and the manner of such violation by specific references to the parts of the Solicitation attached as exhibits and why, but for that violation, Protestant would have been selected.

(2) For other acquisition protests, the Detailed Written Statement of Protest must specify each and every selection criterion on which Protestant bases the protest by specific references to the parts of the Solicitation attached as exhibits.

(3) For all protests, Protestant must specify each and every reason that all other Bidders who may be in line for the contract award should not be awarded the contract.

(c) The Detailed Written Statement of Protest must be limited to 50 typewritten or computer generated pages, excluding exhibits, at a font of no less than 12 point or pica (10 characters per inch), on 8 1/2 inch by 11-inch paper of customary weight and quality. The color of the type shall be blue-black or black. In addition to a paper copy, the arbitrator may request that a Protestant submit such information on computer compatible diskette or by other electronic means if the Protestant has the ability to do so.

(d) Any exhibits submitted shall be paginated and the pertinent text highlighted or referred to in the Detailed Written Statement of Protest referenced by page number, section and/or paragraph and line number, as appropriate.

(e) The Detailed Written Statement of Protest shall not be amended.

(f) Protestant(s) may not raise issues in hearing which were not addressed in the Detailed Written Statement of Protest.

(g) A Protestant who fails to comply with this subsection waives Protestant's right to protest.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1414. Review by Coordinator.

(a) Within 2 working days after receipt of the Detailed Written Statement of Protest, the Coordinator shall notify the Contracting Department and the Awardee of a potential protest hearing.

(b) The Coordinator shall review the Detailed Written Statement of Protest within 5 working days after receipt to preliminarily determine if the protest is Frivolous and notify Protestant of the option to withdraw or proceed in arbitration.

(1) If Protestant withdraws the protest within 2 working days after the notification by the Coordinator of a preliminary determination of Frivolousness, the Coordinator shall withdraw the preliminary finding of Frivolousness and refund Protestant's deposit and filing fee.

(2) If the Protestant previously filed two protests under the Alternative Protest Pilot Project preliminarily determined Frivolous by the Coordinator but then withdrew or waived them before the arbitration decision, the Coordinator shall make final the preliminary determination of Frivolousness for the Department of General Services.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1416. Review and Response by Contracting Department and Awardee.

(a) The Awardee shall have 7 working days after notification by the Coordinator to submit to the Coordinator and Protestant a response to the Detailed Written Statement of Protest.

(b) The Contracting Department, in conjunction with the Coordinator, shall have 7 days after the filing of the Detailed Written Statement of Protest to send a response to Protestant and Awardee.

(c) Responses shall follow the standards set forth in Section 1412(c) and (d).

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1418. Bond Requirement.

(a) If the Coordinator has determined that a protest is Frivolous and the Protestant does not withdraw the protest, the Protestant shall be required to post a bond in an amount not less than 10% of the Estimated Contract Value.

(b) The percentage of the bond shall be determined by the Contracting Department and specified in the Solicitation.

(c) Protestant shall post the bond, pursuant to Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, within 15 working days of the filing of the Detailed Written Statement of Protest or shall be deemed to have waived the right to protest.

(1) If the arbitrator determines that the protest is Frivolous, the bond shall be forfeited to Procurement and the Coordinator will impose Sanctions.

(2) If the arbitrator determines that the protest is not Frivolous, the bond will be returned to the Protestant and no Sanctions imposed.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 995.010 et. seq., Code of Civil Procedure; and Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

Article 3. Arbitration Procedure

§1420. Arbitration Process.

Within 19 calendar days after the Notice of Intent to Award has been posted, the Coordinator shall consolidate all remaining protests under the Solicitation, and send to OAH:

- (a) a copy of all Detailed Written Statements of Protest;
- (b) OAH filing fees;
- (c) arbitration deposits, and/or notice that any Protestant is a Small Business;
- (d) Awardee responses;
- (e) Coordinator/Contracting Department responses;
- (f) the Solicitation File; and
- (g) notice to OAH whether interpreter services will be needed for any Protestant or Awardee. OAH shall arrange interpreter services which shall be paid by the Contracting Department.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New article 3 (Sections 1420-1440) and Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1422. Selection of Arbitrator.

(a) Within 2 working days after receipt of the protest from the Coordinator, OAH shall furnish the names of ten arbitrators to Protestant(s), the Awardee, and the Coordinator. The arbitrator list shall include administrative law judges who

are employees of OAH and contract private arbitrators who are not employees of the State of California. Protestant(s), the Awardee, and the Coordinator may each strike two of the ten names and notify OAH within 2 working days. Protestant(s) may also indicate if they prefer a contract arbitrator or an OAH administrative law judge. OAH may then select as arbitrator any name not stricken and shall notify Protestant(s), the Awardee, and the Coordinator within 2 working days. If all names are stricken, the Director of OAH shall appoint an arbitrator.

(b) A proposed arbitrator shall be disqualified on any of the grounds specified in Section 170.1 of the Code of Civil Procedure for the disqualification of a judge.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1424. Authority of Arbitrator.

(a) Arbitrators are authorized to:

- (1) Administer oaths and affirmations;
- (2) Make rulings and orders as are necessary to the fair, impartial, and efficient conduct of the hearing; and
- (3) Order additional deposits from Protestant(s) to cover additional estimated costs. If OAH does not receive the required deposit(s) in the time specified, the right to protest will be deemed waived.

(b) The arbitrator shall have exclusive discretion to determine whether oral testimony will be permitted, the number of witnesses, if any, and the amount of time allocated to witnesses.

(c) It shall be in the arbitrator's exclusive discretion to determine whether to:

- (1) Conduct a prehearing conference; and/or
- (2) Permit cross-examination and, if so, to what extent; and/or
- (3) Review documents alone for all or part of the protest.

(d) It shall be in the arbitrator's exclusive discretion to determine whether additional responses and rebuttals are to be submitted, and the timelines and page limits to be applied.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1426. Decision Based in Whole or in Part on Documents Alone.

Any Party may request that the arbitrator base the arbitrator's decision on documents alone. It shall be the arbitrator's exclusive discretion to do so.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1428. Prehearing Conference.

(a) If the arbitrator determines that a prehearing conference is necessary, OAH shall set the time and place and notify Protestant(s), the Awardee, and Procurement at least 5 working days prior to the prehearing conference.

(b) The prehearing conference shall be held to identify and define issues in dispute and expedite the arbitration. The parties should be prepared to discuss, and the arbitrator may consider and rule on, any of the following matters applicable to the protest:

(1) Clarification of factual and legal issues in dispute as set forth in the Detailed Written Statement of Protest.

(2) The extent to which testimony shall be permitted and the extent to which cross-examination will be allowed.

(3) Identity of and limitations on number of witnesses, need for interpreters, scheduling and order of witnesses, etc.

(4) Any other matters as shall promote the orderly and efficient conduct of the hearing.

(c) At the prehearing conference, Protestant(s), the Awardee, and Procurement shall deliver a written statement which contains the name of each witness a party wishes to call at hearing along with a brief written statement of the subject matter of the witness's expected testimony. If the arbitrator, in his or her exclusive discretion, allows an expert witness to be called, the party calling the witness shall provide the name and address of the expert along with a brief statement of the opinion the expert is expected to give. The party shall also attach a statement of qualifications for the expert witness.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1430. Scheduling the Hearing.

The arbitrator shall schedule the date, time, and place of hearing and notify all Parties.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1432. Discovery.

The arbitrator has exclusive discretion to issue subpoenas and/or subpoena duces tecum. There shall be no right to take depositions, issue interrogatories, or subpoena persons or documents.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1434. Attendance at Hearings.

The Arbitration hearings shall be open to the public unless the arbitrator, in his or her exclusive discretion, determines that the attendance of individuals or groups of individuals would disrupt or delay the orderly conduct or timely completion of the proceedings.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1436. Arbitrator's Decision.

(a) The final decision shall be in writing and signed by the arbitrator. It shall include a Statement of the Factual and Legal Basis for the decision, addressing the issues raised in the Detailed Written Statement(s) of Protest, and shall include an order upholding or denying the protest(s). The arbitrator's order shall not award a contract.

(b) A copy of the decision shall be sent by regular mail to Procurement, the Contracting Department, the Awardee, and Protestant(s) within 45 calendar days after the filing of the first Detailed Written Statement of Protest. In the arbitrator's exclusive discretion, this timeline may be extended for an additional 15 calendar days. The arbitrator's failure to issue a decision within the time specified by this section shall not be a ground for vacating the decision.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1437. Costs.

(a) For protests not determined Frivolous by Procurement:

(1) If the arbitrator denies the protest, Protestant(s) will be liable for all costs of the arbitration.

(2) If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.

(b) If Procurement determined that the protest was Frivolous and the arbitrator affirms that the protest is Frivolous, the bond shall be forfeited to Procurement, the protest will be denied, and Protestant(s) will be liable for all costs of the arbitration.

(c) If Procurement determined that the protest was Frivolous and the arbitrator determines that the protest is not Frivolous, any bond(s) posted by Protestant(s) shall be returned:

(1) If the arbitrator denies the protest, Protestant(s) shall be liable for half of the costs of the arbitration. The Contracting Department shall pay the remaining half of the arbitration costs.

(2) If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.

(d) A Protestant who withdraws his or her protest before the arbitrator's decision has been issued will remain liable for all arbitration costs up to the time of withdrawal. These costs include, but are not limited to, the arbitrator's time in preparation, prehearing conferences, and hearing the protest. If Procurement deemed the protest Frivolous, any bond posted shall be forfeited to Procurement.

(e) Except as provided in (f), if any costs are determined to be payable by Protestant(s), that amount shall be subtracted from deposit(s) of Protestant(s) as ordered by the arbitrator. Any additional costs shall be billed to Protestant(s) and any refunds shall be sent to Protestant(s) by OAH.

(f) If a Protestant is a Small Business, then the Contracting Department shall pay OAH all arbitration costs and collect the amount due from Protestant.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1438. Judicial Review.

The grounds for judicial review shall be as set forth in Chapter 4 of Title 9 of Part III of the Code of Civil Procedure (commencing with Section 1285).

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).

§1440. Transcripts.

(a) A party desiring a transcript of the proceedings shall contact the OAH Transcript Clerk to make arrangements to pay for preparation of the transcript. Prior to preparation of the transcript, a deposit equal to the estimated cost of the transcript shall be paid. Preparation of the transcript will be arranged by the OAH Transcript Clerk. The deposit shall be applied to the actual cost and any

excess shall be returned to the party that submitted the request. Any balance due shall be paid by the party or a representative on behalf of the party requesting the transcript before the transcript is released to the requesting party.

(b) Unless a record of a proceeding or any portion thereof was sealed, any person may request a transcript or a recording of the proceeding. If a record of a proceeding or any portion thereof was sealed, only parties to the proceeding may request a transcript of the sealed portions, and the sealed portions shall not be disclosed to anyone except in accordance with the order sealing the proceeding or subsequent order.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New Section filed 8-18-98; operative 8-18-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 34).