

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) SPECIAL PROVISIONS – NON-IT COMMODITIES

DEFINITIONS:

Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.

- a) **“Agreement”** means this Agreement or agreement (including any purchase order), by whatever name known or in whatever format used.
- b) **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- c) **“Buyer”** means the State’s authorized contracting official.
- d) **“Contract”** when used in a CMAS agreement, means a Contract issued by the purchasing agency to the CMAS Agreement holder.
- e) **“Contractor”** means the Business Entity with whom the State enters into this Agreement. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.

1. CMAS - AGREEMENT AMOUNT:

There is no guarantee of minimum purchase of Contractor's products or services by the State.

2. CMAS - TERMINATION OF CMAS AGREEMENT:

- a) The State may terminate this CMAS Agreement at any time upon 30 days prior written notice.
- b) If the Contractor's GSA Multiple Award Schedule or other multiple award base agreement is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered terminated on the same date.
- c) Upon termination or other expiration of this Agreement, each party will assist the other party in orderly termination of the Agreement and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
- d) Prior to the expiration of this Contract, this Contract may be terminated for the convenience of both parties by mutual consent.

This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

3. CMAS - TERMINATION FOR NON- APPROPRIATION OF FUNDS:

- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- b) STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR’S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

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4. CMAS - DEBARMENT CERTIFICATION (FEDERALLY FUNDED CONTRACTS):

When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the Buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

5. CMAS - PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT:

All Contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds

6. CMAS - ASSIGNMENT:

This Agreement shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

7. CMAS - ORDER OF PRECEDENCE:

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Agreement, the following order of precedence shall apply:

- a) these General Provisions – Non-IT Commodities;
- b) Contract form, i.e., Purchase Order Standard 65, etc., and any amendments thereto;
- c) federal General Services Administration (GSA) (or other multiple award agreement) terms and conditions;
- d) Statement of Work, including any specifications incorporated by reference herein;
- e) special terms and conditions; and
- f) all other attachments incorporated in the Contract by reference.

8. CMAS - WARRANTY:

The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other multiple award base agreement used to establish this

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CMAS Agreement. When there is a conflict between the language, the following warranty language overrides.

Unless otherwise specified, the warranties contained in this Contract begin after acceptance has occurred.

- a) Contractor warrants that Goods and services furnished hereunder will conform to the requirements of this Contract (including all descriptions, specifications and drawings made a part hereof), and such Goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the Goods or services.

9. CMAS - CONTRACTOR'S LICENSE REQUIREMENTS:

Contracts that include installation or the wording "Furnish and Install" require at the time of Contract award that Contractors possess a valid California State Contractor's License. If subcontractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for Contract revocation.

10. CMAS-PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):

- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than 100 percent of the Contract price. Forms shall be provided to the Contractor.
- b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.
- c) The Contractor hereby certifies by signing this Contract that:
 - i. Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.
 - ii. Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with

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such provisions before commencing the performance of the work of the purchase order.

d) Laws to be Observed

i. Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than \$50 for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices. Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State \$25 for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.

ii. Worker's Compensation Insurance

The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.

iii. Travel and Subsistence Payments

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

iv. Apprentices

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each Contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to ensure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder.

Responsibility for compliance with this section lies with the prime Contractor.

v. Payroll

The Contractor shall keep an accurate payroll record /showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in section 1776 of the California Labor Code.

11. CMAS - CONFLICT OF INTEREST:

a) Current State Employees (Public Contract Code Section 10410):

- i. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
- ii. No officer or employee shall Contract on his or her own behalf as an independent

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Contractor with any State agency to provide Goods or services.

b) Former State Employees (Public Contract Code Section 10411):

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

12. CMAS - SUBCONTRACTING REQUIREMENTS:

Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract/purchase order, and which is expected to receive more than 10 percent of value of the Contract/purchase order, must also meet all Contractual, administrative, and technical requirements of the Contract/purchase order, as applicable.

13. CMAS - RENTAL AGREEMENTS:

The State does not agree to:

- Indemnify a Contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the Contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (State Acquisitions Manual 8736).

14. CMAS - LEASE (LEASE SMART):

If an agency desires to lease through Lease SMart, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

Should the State desire financing of the assets provided hereunder through the Golden State Financial Marketplace, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any

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additional documents necessary for the State selected financing plan. The State- designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.

15. CMAS - QUARTERLY REPORTS:

Contractors are required to submit quarterly business activity reports, as specified in this Agreement, even when there is no activity. A separate report is required for each Contract, as differentiated by alpha/numeric suffix.

16. CMAS - LIQUIDATED DAMAGES:

In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

17. CMAS - PROGRESS PAYMENTS/PERFORMANCE BONDS:

In accordance with PCC 10314: Any Contract for Goods to be manufactured by the Contractor specially for the State and not suitable for sale to others in the ordinary course of the Contractor's business may provide, on such terms and conditions as the department deems necessary to protect the State's interests, for progress payments for work performed and costs incurred at the Contractor's shop or plant, provided that not less than 10 percent of the Contract price is required to be withheld until final delivery and acceptance of the Goods, and provided further, that the Contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the Contract securing the faithful performance of the Contract by the Contractor.