

CMAS

**Contract No:
3-03-70-0900C**



State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency

DEPARTMENT OF GENERAL SERVICES
Procurement Division

December 8, 2003

Mr. Alan Smith
ea consulting, inc.
1130 Iron Point Road, Suite 288
Folsom, CA 95630

Subject: ea consulting, inc. California Multiple Award Schedule (CMAS)

CMAS #3-03-70-0900C - Contract Term: December 8, 2003 through June 30, 2007
**GSA #GS-35F-4338D - Consulting-Application Develop, IT Data Recovery,
IT Project Mgmt, IT Project Planning, IT Requirements Analysis,
IT Strategic Plan, IT System Mgmt, IT System Implement,
Migration Planning , Programming, Training Develop**

The State of California is pleased to accept your firm's offer to establish a California Multiple Award Schedule (CMAS) contract, which we have assigned the above CMAS contract number for the term identified on page one of the contract. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm.

Agencies may procure their products and/or services from your firm during the term of this contract. This acceptance letter, the attached CMAS contract pages including ordering instructions and special provisions as well as CMAS Terms and Conditions, and the applicable product/services catalog or listing shall be considered part of the CMAS contract.

It is your firm's responsibility to furnish, upon request, copies of the CMAS contract to state and local agencies. A complete CMAS contract includes the following: **1) CMAS cover pages** (signature page, ordering instructions and special provisions as prepared by the CMAS Unit), Std. 204 Payee Data Record, and any attachments or exhibits as prepared by the CMAS Unit, **2) CMAS Terms and Conditions**, **3) Federal terms and conditions**, and **4) product/service listing and prices** (if not already included in the aforementioned). The CMAS Unit strongly recommends to all government agencies to place orders with suppliers who provide ALL of the contract elements described above.

Contractors are required to submit a detailed report quarterly (refer to CMAS Terms and Conditions, General Provision, Paragraph 59) to the **DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing**. A separate report is required for each contract, as differentiated by alpha suffix and shall include the activity of the contractor's respective authorized CMAS resellers when applicable. This report is required within two weeks after the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

**THE FIRST QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q4-2003 (OCTOBER-DECEMBER),
DUE BY JANUARY 15, 2004.**

If your firm has an electronic Bulletin Board System (BBS) available to state departments for on-line inquiry of current catalog or listing updates, or your catalog(s) or listing(s) are available on CD ROM, please inform our agencies of how they may avail themselves of these options.

Upon award of your CMAS Contract, a "Tool Kit" is available for your use in marketing your products and/or services to state and local government agencies, school districts, utilities and other entities authorized to expend public funds. The Tool Kit can be accessed through the CMAS website at www.dgs.ca.gov/pd by selecting CMAS; Contractors/Suppliers; CMAS Marketing Tool Kit. The CMAS logo icons "Approved CMAS Contractor" which are only available to approved CMAS contract holders for display at conferences or on other marketing material. A login and password is required in order to download the logo. At the prompt, enter the login: "cmassupplier" and the password: "cmas010194". If you need assistance during this process, please call me.

We remind you that prior approval is required from the state for all news releases regarding this contract. Also, it is not acceptable to include any products or services on CMAS which are not approved for the federal GSA award schedule (or other base contract) referenced in your CMAS contract.

Should you have any questions, please contact me at 916/375-4382. Thank you for your continued cooperation.



HIROKO KUROSAWA, Program Analyst
California Multiple Award Schedules Unit

Attachments



Department of General Services
Procurement Division
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

State of California
MULTIPLE AWARD SCHEDULE
ea consulting, inc.

3-03-70-0900C - Consulting-Application Develop
Consulting-IT Data Recovery
Consulting-IT Project Mgmt
Consulting-IT Project Planning
Consulting-IT Requirements Analysis
Consulting-IT Strategic Plan
Consulting-IT System Mgmt
Consulting-IT System Implement
Consulting-Migration Planning
Consulting-Programming
Consulting-Training Develop

(Above descriptions for marketing purposes only. Review contract for products/services available.)

CONTRACT NUMBER: 3-03-70-0900C

CMAS TERM DATES: 12/8/2003 through 6/30/2007

DISTRIBUTION: STATEWIDE

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated January 2003.

NON-INFORMATION TECHNOLOGY SERVICES ARE NOT AVAILABLE UNDER THIS CMAS CONTRACT.

ALL APPLICABLE FEDERAL TERMS AND CONDITIONS HAVE BEEN INCORPORATED INTO THIS DOCUMENT. ATTACHMENT C INCLUDES CONTRACT SERVICE OFFERING, SKILL CATEGORY DESCRIPTION AND PRICE LIST.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Hioko Kurosawa Effective Date: **12/8/2003**
HIROKO KUROSAWA, Program Analyst, California Multiple Award Schedules Unit

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

AVAILABLE PRODUCTS AND/OR SERVICES

Only the following job categories are available under this contract:

- Project Director
- Program Manager
- Manager
- Senior IT Specialist
- IT Specialist
- IT Staff

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA #GS-35F-4338D (KPMG Consulting) with a GSA term of 4/1/2002 through 3/31/2007 including modifications 1-6. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

ISSUE PURCHASE ORDER TO:

Orders may be mailed to the following address, or faxed to 916/608-9968:

ea consulting, Inc.
1130 Iron Point Road, Suite 288
Folsom, CA 95630
Attn: Alan Smith

Agencies with questions regarding products and/or services may contact the contractor as follows:

Phone: 800/399-2828
E-mail: alan.smith@eaconsulting.com

WARRANTY

For warranties, see the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

Contractor personnel shall have the experience, education and expertise as delineated in the CMAS contract.

DELIVERY

As negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

MAXIMUM ORDER LIMITS (Local Governments are Exempt)

CMAS purchases are limited to \$250,000 or less for information technology (IT) goods and services and non-information technology services and \$100,000 or less for commodities (non-IT products) subject to the following solicitation requirements:

- State agencies must solicit and obtain, if available, offers from 3 contractors (including 1 small business and/or DVBE if available). This is not a bid transaction so small business preference, protest language, intents to award, evaluation criteria, advertising, etc. are not applicable.
- If less than 3 offers received, state agencies must document their files with the solicitation method used.
- If only one source is known (competing offers cannot be obtained), the non-competitive bid (NCB) contract process must be followed. See the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, for NCB guidelines.
- Evaluation and award may be based on best value, as applicable, and not restricted to lowest cost.
- CMAS transactions under \$5000 do not require multiple offers if the state agency can document fair and reasonable pricing.

Exempt entities and local governments are not subject to these order limits. Go to DGS/PD web site www.dgs.ca.gov/pd to obtain a copy of the most current Management Memo.

There are guidelines under which CMAS purchase orders for information technology goods and services may exceed \$250,000 up to \$500,000 (no exemptions). For guidelines, see the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, and CMAS Bulletins.

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms). The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65: <http://www.osp.dgs.ca.gov/pdf/std065.pdf>

2. Purchase Orders

The agency is required to forward a copy of each purchase order to the Department of General Services (DGS), Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811 (IMS# Z-1).

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals. See the CMAS Services Guide at www.dgs.ca.gov/pd (click on CMAS) for guidelines pertaining to all orders for services.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

Also, purchase order amendments cannot be issued to add product or services if the CMAS contract end term has expired. However, an amendment is acceptable if it only extends the end term date of the purchase order and no cost increase.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see CMAS Agency Packet, Purchase Order Dollar Limits and Procedures.

5. Amendments to Department's Purchase Orders

Purchase orders can be amended with the same contractor as the original purchase order if there is no dollar increase and no change to the scope of work.

If there is a dollar increase or a change to the scope of work, the department must obtain offers from 3 contractors (following the same guidelines as for the original purchase order) to determine best value for the amended amount. If only one source for department needs, the department must process a Non-Competitive Bid (NCB) contract for the amended amount. This applies even if the amended total is under the order limit.

CONTRACT PRICES

Contract prices for products and/or services are maximums. The ordering agency is encouraged to negotiate lower prices.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

CONTRACTOR OWNERSHIP INFORMATION

ea consulting, Inc. is a large business enterprise

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, state agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:

www.pd.dgs.ca.gov
(click on CMAS click on State Agencies)

In response to our commitment to increase participation by small businesses, the Department of General Services is waiving the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:

- a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
- b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

INTEGRATED SERVICES

Agencies are prohibited from using CMAS and/or Masters for large-scale information technology system integration project except when specifically approved by Procurement Division-Technology Acquisitions Section.

PUBLIC WORKS (INSTALLATION SERVICES ONLY)

A public works contract is defined as an agreement for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" in accordance with the Public Contract Code (PCC) Section 1101. State agencies planning these types of projects need to review the State Contracting Manual (SCM) Sections 10 and 11 and the CMAS Agency Packet, Public Works Projects for applicable guidelines and regulations. Also, the Department of General Services (DGS), Real Estate Services Division (RESA) can be contacted at 916/376-1748 if you have questions about these types of transactions.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

Agency CMAS orders may allow for a public works component only when the service is incidental to the overall project requirements. Agencies are to ensure that the applicable laws and codes pertaining to the contractor and sub-contractor licensing, prevailing wage rates, bonding, labor code requirements, etc. are adhered to by the prime contractor as well as any sub-contractor during performance under the CMAS purchase order. The total dollar value of all services included in a purchase order must not exceed the dollar value of the products.

The bond amount for public works has increased to a sum not less than one hundred percent (100%) of the purchase order price.

Note: In accordance with Labor Code Section 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency's office, and will be made available upon request. The prevailing wage rates are available from the DIR at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774.

Bonds: For guidelines, see CMAS contract, General Terms and Conditions, Public Works Requirements. Also, see CMAS Agency Packet, Administrative Requirements for Bonds and Other Security Documents.

CONSULTING OR PERSONAL SERVICES

To ensure sufficient expertise for all consulting or personal services contracts, prior to issuing an order, the agency is required to review the resumes of all personnel the contractor intends to use to fulfill the order. Each agency is responsible for verifying that contractor personnel meet any education or experience requirements listed in the CMAS contract.

Each order should contain, as a minimum, a description of the task, a statement of the contractor's responsibilities, completion criteria, a list of deliverable items (if any), the estimated starting date, the scheduled completion date, and a fixed cost for each task.

See the CMAS Non-Information Technology Services Guide at www.dgs.ca.gov/pd (click on CMAS) for guidelines pertaining to all orders for services (not just non-information technology services).

The aggregate of the fixed costs for all tasks constitutes the fixed price ceiling for all tasks described.

1. Bond Requirements

For guidelines, see CMAS contract, General Terms and Conditions, CMAS Progress Payments/Performance Bonds. Also, see Agency Packet, Administrative Requirements for Bonds and Other Security Documents.

2. Outsourcing Services

Careful analysis must be given by state agencies to using contracted personnel rather than using civil service positions within state government. Outsourcing services is permissible under the following conditions.

Government Code 19130(c) requires that all persons who provide services to the State under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment.

Management Memo (MM) 95-15 provides the guidance necessary to make the required determination between employee status and independent contractor status and requires a certification about employee status and independent contractor status for each individual under contract.

Issuing a CMAS purchase order for services is permissible when any of the following conditions set forth in Government Code Section 19130(b) can be met:

- Exempt under Constitution
- New state function and legislative authority
- Service not available; highly specialized or Technical
- Incidental to the purchase or lease
- Conflict of interest: need unbiased findings
- Emergency appointment
- Private counsel, with Attorney General (AG) approval and Governor's Office, if applicable
- Contractor will provide deliverables that are not feasible for the State to provide
- Training when civil service is not available
- Urgent, temporary, or occasional services when civil service delay would frustrate the purpose (see Option 2 below)

When justified as outlined above, personal services must fall under one of the two following options:

Option 1. CMAS orders for personal services such as project management, independent verification and validation, systems analysis and design, and miscellaneous services are not limited to the number of hours or months per year that a consultant can

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

work if the services contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system (Government Code 19130.b (3)).

Option 2. CMAS personal services orders for programmers, systems analysts, and technical specialists which are of an urgent, temporary, or occasional nature, such that hiring additional civil service positions is not feasible, are limited to nine months (1548 hours) per consultant within a twelve consecutive month period (Government Code 19130.b (10)/California State Constitution, Article VII, Section 5).

This provision is per agency and is inclusive of orders issued on your behalf by another agency. Contractors must wait three (3) months from CMAS order termination/expiration before submitting the candidate's resume for work at the same agency/department.

For both options above, the contractor may conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment (Government Code 19130.b (9)).

For each order, the agency must prepare and retain in their file a written justification that includes specific and detailed factual information that demonstrates that the contract meets one or more of the conditions set forth in Government Code 19130(b).

3. State Personnel Board Requirements

State Personnel Board (SPB) approval is required for a purchase order based on cost savings to the State as justification for not using civil service personnel.

4. Statement of Work

A Statement of Work (SOW) must be prepared as applicable for each purchase order. Agencies are strongly encouraged to use the list of questions in the back of Attachment J of the CMAS Agency Information Packet as a checklist for developing Statement of Work (SOW) requirements that accompany the purchase order.

5. Follow-on Contracts are Prohibited

No person, firm, or subsidiary thereof who has been awarded a purchase order for consulting services, or a purchase order that includes a consulting component, may be awarded a purchase order for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the purchase order (Public Contract Code 10365.5).

Therefore, any consultant who develops a program study or provides formal recommendations is precluded from providing any work recommended in the program study or the formal recommendation.

NETWORK DESIGN SERVICES

Notwithstanding the contract provisions, the only network design services available through CMAS are those that result in a hardware and/or software solution.

1. Telephone or Data Line design Services

Any type of network design service for telephone or data line design service is not available through CMAS because they are mandatory under the Department of General Services (DGS), Telecommunications Division, Contract CNT-001 (see Agency Packet, Telecommunications Division Contract CNT-001). This provision applies to state agencies only.

2. Telecommunications Transport Systems and Related Infrastructure Components

All network design services for telecommunications transport systems and related infrastructure components shall be performed by a BICSI certified Registered Communications Distribution Designer (RCDD). Evidence of RCDD certification may be required by the ordering agency.

IMAGING SERVICES, COMPUTER AIDED DRAFTING (CAD) OR COMPUTER AIDED DESIGN AND DRAFTING (CADD) CONSTRAINTS

All imaging and CAD/CADD drawings to be used as instruments of service for design or construction of buildings that are not exempt from the Architectural Practice Act must be developed under the supervision, signed and stamped by a design professional who is licensed by the State. Notwithstanding the contract provisions, these services are NOT available through CMAS.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

These services may be used for other purposes besides the construction process addressed above (animated movies, electronic circuit board design, drafting of projects that are not buildings such as furniture, etc.). For example, electronic conversion of paper drawings to electronic drawings. Even if these drawings are for nonexempt structures, there is no design or construction involved in the drafting services and, therefore, the services are acceptable if provided for in the CMAS contract.

EXCLUSIONS – ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL AND LEGAL SERVICES

The following services are not available on the CMAS program:

1. Architectural, Engineering and Environmental Services

Services are not allowed on CMAS that are required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental services as defined in Government Code 4525. If you have questions about these types of transactions, the Department of General Services (DGS), Real Estate Services Division (RESA) can be contacted at 916/376-1748.

2. Legal Services

Contracting for legal services by state agencies is controlled by statutes (GC 11040) that require Attorney General approval prior to entering into contracts with outside counsel. Additionally, Article VII of the California Constitution requires that state legal work be performed by state employees, absent limited exceptions (Government Code 19130). There are also policy-based approval requirements for all Executive Branch agencies that control the use of private counsel.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the following Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges, that is empowered to expend public funds. While the state makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Notwithstanding this, there is no guarantee that "every" possible requirement that pertains to all the different and unique state processes has been included.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to the CMAS Agency Packet for Statewide Procurement Requirements, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements of SAM Section 5203
- SAM Section 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies must adhere to the guidelines in SAM Sections 2120/2121 for servicing office equipment.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 state agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the CMAS contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than \$5,000. Copies of negative evaluations must be sent to the DGS Office of Legal Services. The Bureau of State Audits requires state agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each state accounting office must have a copy of the attached Payee Data Record (Std. 204) in order to process payment of invoices. Agencies should forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative Fee

The Department of General Services (DGS) will bill each state and local agency directly an administrative fee use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This fee is waived for purchase orders to California certified small businesses.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

ea Consulting, Inc. does not accept the State of California credit card (CAL-Card).

CONTRACTOR QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete.

New contracts for contractors with existing contracts, and extensions or renewals of existing contracts, will be approved ONLY if the contractor has submitted to the CMAS Unit all quarterly reports due. (Copies of only purchase orders are no longer acceptable). Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

A sample quarterly report indicating required format and information is attached for your reference (Attachment A).

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- Payee Data Record (Std. 204).
- California CMAS Terms and Conditions.
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at, or below, contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

See CMAS Agency Packet, Agency Responsibilities and Agency Compliance.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues.

See CMAS Agency Packet, Conflict of Interest for guidelines.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

CONTRACTOR TRAVEL

The provision for travel expense reimbursement is included in this contract.

It is important the agency and contractor discuss necessary travel requirements prior to issuing the purchase order because the detail and cost (only as allowed for in the contract) must be included in the agency purchase order to be payable.

State agencies may only pay travel and per diem expenses according to state travel time and per diem rules (represented employee rates) and verified receipts. Local government, education and special districts will pay travel time and per diem according to their statutory requirements. All travel and per diem expenses must be within contract parameters, and incorporated into the purchase order.

Notwithstanding the contract provisions, the State will not be responsible for the cost of travel to bring contractor personnel from out of state to the job site (unless specifically arranged by agency in advance). If requested by the agency, the State will be responsible for the cost of travel from one California agency site to another.

State agencies (not local governments) should refer to SAM Section 0774 "TRAVEL AND RELATED REIMBURSEMENT OF PERSONS NOT STATE EMPLOYEES," when transportation and per diem costs are to be reimbursed by the State.

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages must be included in the purchase order to be applicable, mutually agreed upon by agency and contractor, and cannot be a penalty.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination.

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and state laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment B for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

Phone # 916/375-4363
Fax # 916/375-4663

Calnet # 8/480-4363

Want to know more about CMAS? We welcome the opportunity to present the details of this program to your agency or group. Please contact the California Multiple Award Schedules Unit at 916/375-4363 or Calnet 8/480-4363 to arrange a date and time.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C**

ATTACHMENT A

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

(A REPORT IS REQUIRED EVEN WHEN THERE IS NO ACTIVITY)

1. Calendar Quarter Number: (Quarter # and Year)
2. CMAS Contract Number: XX-XX-XX-XXXXX (including alpha suffix if applicable)
3. Contractor: Company Name and Address
4. Contractor Contact: Name and Phone Number

5.	6.	7.	8.	9.	10.	11.	12.
Agency Name	Purchase Order Number	Purchase Order Date	Agency Billing Code	Total Dollars per Purchase Order	Agency Contact	Agency Address	Phone Number
FORMAT							

13. Total dollars for quarter: \$ _____

The Quarterly Report must contain all of the above data elements, but may be in a landscape report format.

1. Identify the calendar quarter number and year for the report you are submitting.
2. Identify your company's CMAS contract number. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Multiple contracts on Std. 65 State Purchase Order form should be itemized by contract number. For each individual contract (as differentiated by alpha suffix), identify and group together the contract number with line items and subtotal per contract number (do not include tax in the subtotal).
3. Identify your company name and mailing address.
4. Identify the company contact and phone number for the CMAS contract or the person preparing and submitting the report.
5. Identify the State Agency or local government that issued the CMAS order.
6. Identify the purchase order number (and supplement number if applicable) on the order form. This is not your invoice number. This is the number the agency or local government assigns to the order.
7. Identify the date the purchase order was issued. This is not the date you received, accepted, or invoiced the order.
8. Identify the State Agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Local governments will not reference a billing code. You may leave this blank for local government orders.
9. Identify the total dollars of each purchase order before tax. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount regardless of when you invoice order, perform services, deliver product, or receive payment. For amended orders, enter the incremental increase/decrease only.
10. Identify the "Bill To" agency or local government CONTACT on the purchase order.
11. Identify the "Bill To" agency or local government ADDRESS on the purchase order.
12. Identify the agency or local government phone number on the purchase order.
13. Identify the total dollars pre-tax for all orders placed in that calendar quarter.

ATTACHMENT B

ADA NOTICE

**Procurement Division (State Department of General Services) AMERICANS
WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY**

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodation for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person that is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

ATTACHMENT C

SKILL CATEGORY DESCRIPTIONS

IT Facility Operation and Maintenance

ea consulting, inc. offers a full range of services to assist clients in implementing and operating IT system solutions. Beginning with implementation planning during the system development/selection phase, through the actual implementation, and followed by the operations and sustainment period of the lifecycle, ea consulting, inc. Consulting employs proven techniques and processes to help clients successfully start up systems and maximize the benefits from their investment.

Our proven implementation approach is supported by tools and techniques that can be applied to a range of system implementation scenarios, from custom developed software to COTS and GOTS. Specific examples of these services include:

- **Implementation Planning** - Supporting successful planning and managing of systems implementations addressing all elements of the implementation process, from organizing and defining the work (WBS, project schedules) to tracking and controlling the activities. Our metrics highlight critical implementation parameters and provide Government managers quantified progress information. We prepare implementation plans and assist the Government in executing and monitoring implementation progress and results.
- **Change Management** - Preparing the user and ensuring acceptance of the system and overall change to the business is vital to a successful systems implementation. ea consulting, inc. employs a change management methodology and structured process aimed at formalizing how the implementation team approaches the change process. Services include change management training for implementation team members, diagnostic tools and instruments analysis to determine system readiness, techniques and tools formulation to reduce the risk of having an unsuccessful change, and methods for measuring the progress and success of the change.
- **Training** - Educating on new processes that accompany system implementation and training on system operation and how to successfully employ it. ea consulting, inc. prepares courses and material on new systems as well as existing legacy systems. We employ effective means of educating and training using classroom instruction, hands-on demonstration and computer-based training. Our instructors emphasize the business use of the system with users, training them in the context of how they perform their jobs. Training of system administrators concentrates on the operation and performance of the system.
- **System Installation** - Installing and testing the system and successfully introducing it into the target business environment. Our team can host and configure the system, conduct installation validation tests, prepare and convert legacy data into the new system and bring the system on-line for the organization.
-

ATTACHMENT C

SKILL CATEGORY DESCRIPTIONS

IT Systems Analysis Services

ea consulting, inc. delivers a set of services to support analyses and design of IT solutions ranging from a single business system to entire mission or enterprise-wide systems. In providing these services, ea consulting, inc. employs the most current and appropriate tools and methodologies to determine requirements, perform information strategic planning, assess processing needs and select and design appropriate solutions.

ea consulting, inc. focuses on understanding the organization's current capabilities, requirements, and future goals, then applies the appropriate technologies and methodologies to design the optimal systems solution. Examples of our specific services include the following:

- **Requirements Analysis** - Providing a variety of requirements analysis services, including requirements definition, requirements reviews, requirements trace ability, and allocation of requirements to software, hardware, telecommunications, security, operations and maintenance, and other program elements.
- **System Design and Engineering** - Mapping the strategic planning and analysis results to reliable implementations of the automated business model. We provide services in performance and capacity modeling, planning for long-range technology evolution, human factors engineering, design of interfaces with external systems, and both the design and integration of the hardware, software, and network components comprising the customer's systems solution. Using the most appropriate COTS hardware, software, and network components, ea consulting, inc. develops the most suitable system architectures, designs, and implementations to satisfy a given customer's infrastructure needs. We also ensure the systems solution is engineered to fully support the design and execution of the customer's software solution. Our systems design and engineering methodology provides for a complete documentation trail from system architecture and design descriptions, requirements specifications, and enterprise model descriptions to the lower-level design descriptions and software specifications.
- **Information Engineering** - Providing information engineering (IE) services to include information strategy planning and business area analysis. We support joint requirements planning (JRP), joint applications design (JAD), and other rapid application development (RAD) techniques as part of our analysis and design approach. Our IE capabilities are enhanced by our extensive use of analysis and design CASE tools which are effectively interfaced with our development, test, configuration management, and documentation tools. ea consulting, inc. provides expertise in enterprise modeling, business process modeling and data modeling using structured and object-oriented modeling techniques and methodologies. During business process modeling, ea consulting, inc. identifies high-level activities of the organization, and functionally decomposes them to capture the lower-level business processes. During data modeling, ea consulting, inc. captures the logical view of the organization's data, applies data warehousing techniques to provide enterprise-level reporting, and uses entity-relationship diagrams to provide the data relationship logic on which applications are built. ea consulting, inc. strives to reuse existing data models and integrate standard data elements.

ATTACHMENT C

SKILL CATEGORY DESCRIPTIONS

Programming Services

ea consulting, inc. provides a wide variety of services to assist organizations in all aspects of software development from rapid prototyping, to the development of customized applications, to supporting application migration from legacy to open platforms. In support of our software development efforts, ea consulting, inc. employs an extensive set of software development tools, standards, and methodologies.

Based on a set of well-defined requirements, ea consulting employs a wide variety of development approaches and methods, each supported by Computer Aided Software Engineering (CASE) tools. These methods include the waterfall, spiral, rapid application development (RAD), and object-oriented design/object-oriented programming (OOD/OOP) approaches. Examples of our specific services include developing and supporting client/server applications, COTS integration and tailoring, systems programming, Internet and Intranet applications, and graphical user interface (GUI) development. Examples of our specific products and services are as follows:

- **Custom Applications** - Providing system integration services tailored to the needs of the particular client. These services are comprised of the development or refinement of the application, software unit and integration testing, and the documentation and maintenance of the solution on the target platform. ea consulting, inc. develops custom applications in a variety of programming languages and utilizes industry leading CASE development environments such as Power builder and TI Composer. As part of our development process, we employ stand-alone, client/server, and multi-tiered software architectures under both proprietary and open environments. Using such tools as Microsoft Access, Visual Basic, and Visual C++, ea consulting, inc. delivers GUI-based applications for use with corporate databases. Additionally, ea consulting, inc. provides complete database and data warehousing development and integration capabilities. Our resources support programming efforts on multiple desktop and server platforms including OS/2, Windows 95, Windows NT, Netware, and UNIX systems. We integrate a software reuse plan throughout the development process, and access Government, commercial, and in-house reuse libraries, as appropriate, to most effectively leverage reusable code.
- **Migration** - Assisting organizations as they migrate existing applications to new platforms. From screen scraper technology to the transition of applications from legacy to client/server platforms, ea consulting, inc. provides effective migration solutions for an organization's changing requirements.

ATTACHMENT C

SKILL CATEGORY DESCRIPTIONS

IT Data Conversion Services

ea consulting, inc. delivers a set of technical data management and development services that entails full life-cycle support for the development and implementation of data requirements for both small and large scale automated data processing systems. ea consulting, inc.'s enterprise data services can leverage existing data structures and planned enterprise data requirements to provide data modeling, data standardization, data management, data warehousing, and database development. Each of these services are provided as a part of combined "data solution" package that is tailored to the needs of the enterprise or as stand alone initiatives.

ea consulting, inc. applies "best of class" criteria to tool and methodology selection to support each area of enterprise data service. Based on our broad knowledge of both commercial and Government data services and of "best of class" tools and methodologies, ea consulting, inc. is able to provide vendor independent solutions.

ea consulting, inc. recognizes data and data management as a cornerstone of the enterprise IT suite. The capability to support the enterprise rests on the use and accessibility of data and data management techniques. Examples of our specific services that support data and data management include the following:

- **Data Modeling** - Developing and applying the user's logical view of data to reflect the information structure of an enterprise. ea consulting, inc. provides data modeling, data modeling strategy, planning, and integration. These tasks are accomplished using "best of class" tools and methodologies that are used to identify and determine essential data model relationships as well as required data entities, attributes, and domains.
- **Data Standardization** - Designing, documenting, reviewing, and approving unique names, definitions, characteristics, and representations of data elements according to established procedures and conventions. Our services assist the customer in application of standardization procedures that provide a framework for increased data integration and re-use. Standardization requires that major activities such as filtering data, analyzing data, and obtaining enterprise-wide review and approval of proposed standards be accomplished.
- **Data Management** - Providing control, review, and integration of data, data models, architecture, languages, interfaces, and systems environments. Ea consulting, inc. data management services assist the enterprise in developing an environment that optimizes data accessibility, integrity, and security.
- **Database Design and Implementation** - Designing and implementing databases in an integrated process with the development of an automated data processing system that optimizes storage, availability, and integrity of enterprise data. ea consulting, inc. database design and implementation services provide model based design and development of databases using "best of class" database development languages and environments.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C

ATTACHMENT C
LABOR CATEGORY DESCRIPTIONS

General Information Technology Labor Categories

All labor categories are required to have a minimum education requirement of a Bachelors degree in a relevant field.

▪ **PROJECT DIRECTOR:** **RATE PER HOUR** **\$197**

Over ten years experience in leading and providing technical direction of Information Technology (IT) projects. Demonstrated ability to provide guidance and direction for multiple IT projects. Capability to manage multitask projects of high complexity. Provides primary interface with client management personnel regarding strategic issues. Directs the completion of projects within estimated time frames and budget constraints. Coordinates all parties to tasks, reviews work products for completeness and adherence to customer standards. Delivers presentations and leads strategic level client meetings.

▪ **PROGRAM MANAGER:** **RATE PER HOUR** **\$168**

Over eight years of progressive experience in leading IT projects. Demonstrated ability to provide guidance and direction for specific projects or sub-tasks. Capability to manage multitask projects of high complexity. Increasing responsibility in design and management of IT projects. Directs the completion of projects within estimated time frames and budget constraints. Coordinates project specific parties and reviews work products for completeness and adherence to customer requirements.

▪ **MANAGER:** **RATE PER HOUR** **\$137**

Six or more years of progressive experience in leading and participating in IT projects. Demonstrated ability to manage a project and to provide guidance and direction for specific projects or sub-tasks. Proven expertise in two or more of the service areas. Increasing responsibility in IT system design and management. Interfaces with the client on a day-to-day basis. Directs the completion of project specific tasks within estimated time frames and budget constraints. Manages the day-to-day activities and reviews work products for completeness and adherence to customer requirements. Delivers presentations and leads client meetings.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
EA CONSULTING, INC.
CMAS NO. 3-03-70-0900C

ATTACHMENT C
LABOR CATEGORY DESCRIPTIONS

General Information Technology Labor Categories

- **SENIOR IT SPECIALIST:** **RATE PER HOUR** **\$123**

Three years of progressive experience in participating in IT projects. Demonstrated ability to provide guidance and direction for specific sub-tasks of a project. Specific expertise in one or more of the service areas and knowledgeable in at least one other. Interfaces with the client on a day-to-day basis. Supports the completion of project specific tasks within estimated time frames and budget constraints.

- **IT SPECIALIST:** **RATE PER HOUR** **\$106**

Up to three years of experience in participating in IT projects. Specific expertise in one of the service areas. Interfaces with the client on a day-to-day basis. Supports the completion of project specific tasks within estimated time frames and budget constraints. Supports presentations and client meetings.

- **IT STAFF:** **RATE PER HOUR** **\$67**

Progressive experience in any one of the service areas. Perform specific procedures under the guidance of an IT Specialist.

**CMAS CONTRACTOR PACKET
EXHIBIT Q - PAYEE DATA RECORD**

STATE OF CALIFORNIA

PAYEE DATA RECORD

(Required in lieu of IRS W-9 when doing business with the State of California)

STD. 204 (REV. 2-2000)

NOTE: Governmental entities, federal, state, and local (including school districts) are not required to submit this form.


SECTION 1 must be completed by the requesting state agency before forwarding to the payee

1 PLEASE RETURN TO:	DEPARTMENT/OFFICE DGS Procurement Division - CMAS Unit	PURPOSE: Information contained in this form will be used by state agencies to prepare information Returns (Form 1099) and for withholding on payments to nonresident payees. Prompt return of this fully completed form will prevent delays when processing payments. (See Privacy Statement on reverse)
	STREET ADDRESS 707 Third Street, Second Floor	
	CITY, STATE, ZIP CODE West Sacramento, CA 95605	
	TELEPHONE NUMBER (916) 375-4363	

2	PAYEE'S BUSINESS NAME <u>ea consulting, inc.</u> <hr/> <u>1130 IRON POINT ROAD, SUITE #288</u> MAILING ADDRESS (Number and Street or P. O. Box Number) <u>FOLSOM, CA 95630</u> <small>(City, State and Zip Code)</small>
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3 VENDOR ENTITY INFORMATION	CHECK ONE BOX ONLY <input type="checkbox"/> LEGAL CORPORATION <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> MEDICAL CORPORATION <input type="checkbox"/> ESTATE OR TRUST <input type="checkbox"/> EXEMPT CORPORATION <input checked="" type="checkbox"/> ALL OTHER CORPORATIONS FEDERAL EMPLOYERS IDENTIFICATION NUMBER (FEIN): <u>68-0209442</u>	NOTE: State and local governmental entities, including school districts are not required to submit this form. NOTE: Payment will not be processed without an accompanying taxpayer I.D. number.
	<input type="checkbox"/> INDIVIDUAL OR SOLE PROPRIETOR SOCIAL SECURITY NUMBER OF OWNER _____ OWNER'S FULL NAME _____	

4 PAYEE RESIDENCY STATUS	CHECK APPROPRIATE BOX(ES) <input checked="" type="checkbox"/> California Resident - Qualified to do business in CA or a permanent place of business in CA <input type="checkbox"/> Nonresident (See Reverse) Payments to nonresidents for services may be subject to state withholding <input type="checkbox"/> WAIVER OF STATE WITHHOLDING FROM FRANCHISE TAX BOARD ATTACHED <input type="checkbox"/> SERVICES PERFORMED OUTSIDE OF CALIFORNIA/ GOODS ONLY SOLD TO CALIFORNIA	NOTE: a. An estate is a resident if decedent was a California resident at time of death. b. A trust is a resident if at least one trustee is a California resident. (See reverse)
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5 CERTIFYING SIGNATURE	I hereby certify under penalty of perjury that the information provided on this document is true and correct. If my residency status should change, I will promptly inform you.		
	AUTHORIZED PAYEE REPRESENTATIVE'S NAME (Type or Print) <u>ALAN SMITH</u>	TITLE <u>DIRECTOR, PUBLIC SECTOR</u>	
	SIGNATURE 	DATE <u>5/30/2002</u>	TELEPHONE NUMBER <u>916-608-1858</u>

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS**

1. Definitions

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- b) **"Buyer"** means the State's authorized contracting official.
- c) **"Contract"** means the purchase order, contract and/or agreement, by whatever name known or in whatever format used.
- d) **"Contractor"** means the business entity with which the State enters into a contract. Contractor shall be synonymous with "supplier," "vendor" or other similar term.
- e) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, equipment ("commodities"), and information and telecommunication technology.
- f) **"State"** means the State of California, its employees and authorized representatives.

2. CMAS Payee Data Record

Each contractor doing business with the State of California must indicate their residency status along with their vendor identification number. Contractors are required to provide a completed Payee Data Record, Std. 204, to the DGS Procurement Division before entering into this contract.

3. Complete Integration

This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.

4. Severability

The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. Independent Contractor

Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.

6. Applicable Law

This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.

7. Compliance with Statutes and Regulations

- a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
- b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

8. Contractor's Power and Authority

The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party that might abridge any rights of the State under this contract.

9. CMAS Assignment

This contract 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.

Should the State desire financing of the assets provided hereunder through GS SMarT, 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 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.

10. Waiver of Rights

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAA)
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS**

11. Order of Precedence

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

- a) Contract form, i.e., Purchase Order, Standard Agreement, etc., and any amendments thereto;
- b) Specifications/Statement of Work;
- c) Special terms and conditions;
- d) General terms and conditions, including these General Provisions; and
- e) All other attachments incorporated herein by reference.

The specifications shall prevail over any subsidiary documents referenced therein.

12. Packing and Shipping

- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) Show the number of the container and the total number of containers in the shipment; and
 - ii) Show the number of the container in which the packing sheet has been enclosed.
- b) All shipments by contractor or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. Transportation Costs and Other Fees or Expenses

No charge for delivery, drayage, express, parcel post, packing, carriage insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.

- a) Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms, and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless the Transportation Management Unit within the Department of General Services Procurement Division approves an exact freight charge and a waiver is granted.

- c) On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14. Time is of the Essence

Time is of the essence in this contract.

15. Delivery

Contractor shall strictly adhere to the delivery and completion schedules specified in the purchase order. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.

16. Substitutions

Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.

17. Inspection, Acceptance and Rejection

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of contractor's quality assurance system or other business practices related to performance of the contract.
- b) All goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All goods to be delivered hereunder may be subject to final inspection, test, and acceptance by the State at destination, notwithstanding any payment or inspection at source.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS

- e) The State shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance by the State shall not waive any rights that the State might otherwise have at law or by express reservation in this contract with respect to any nonconformity.

18. Samples

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products quoted and/or specified in the contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.

19. CMAS Warranty

The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS contract. When there is a conflict between the following warranty language and the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS contract, 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.

20. Safety and Accident Prevention

In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

21. Insurance

When performing work on property in the care, custody, or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the buyer, the contractor may be required to have the State shown as an "additional insured" on selected policies.

22. Termination for Non-Appropriation of Funds

- a) If the term of the purchase order extends into fiscal years subsequent to that in which it is approved, such continuation of the purchase order 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 goods furnished under the purchase order, terminate any services supplied to the State under the purchase order, and relieve the State of any further obligation therefor.
- b) State agrees that if paragraph a) above is invoked, goods 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.

23. Termination for the Convenience of the State

- a) The State may terminate performance of work under the purchase order for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the purchase order, the purchase order shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the purchase order shall not be void.
- b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause.

The contractor shall:

- i) Stop work as specified in the Notice of Termination.
- ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the purchase order.
- iii) Terminate all subcontracts to the extent they relate to the work terminated.
- iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts (the approval or ratification of which will be final for purposes of this clause).

24. Termination for Default

- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate the purchase order in whole or in part if the contractor fails to:
 - i) Deliver the goods or to perform the services within the time specified in the purchase order or any amendment thereto.
 - ii) Make progress; so as to endanger performance of the purchase order (see subparagraph (b) below).
 - iii) Perform any of the other provisions of the purchase order (see subparagraph (b), below).

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAA),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS**

- b) The State's right to terminate the purchase order under subparagraph (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
- c) If the State terminates the purchase order in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d) If the purchase order is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
 - i) Completed goods, and
 - ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of the purchase order. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

25. Force Majeure

Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or state government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

26. Rights and Remedies of State for Default

- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items that the contractor agreed to supply shall be borne and paid for by the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.

27. Contractor's Liability for Injury to Persons or Damage to Property

- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

28. Indemnification

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS

29. Invoices

Unless otherwise specified, invoices shall be sent to the address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. Required Payment Date

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. Taxes

Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.

32. Newly Manufactured Goods

All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

33. Contract Modification

No amendment or variation of the terms of this contract shall be valid unless made in writing, and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

34. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information that is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

35. News Releases

Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

36. Patent, Copyright and Trade Secret Indemnity

- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims, and liability for patent, copyright, and trade secret infringement.
- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums the State has paid contractor less any reasonable amount for use or damage.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAA),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS

- e) The contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright, or trade secret infringement that is based upon:
 - i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,
 - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii) The modification by the State of the equipment furnished hereunder or of the software; or
 - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the contractor to the State with respect to infringement of patents, copyrights or trade secrets.
- b) Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

39. Stop Work

37. Examination and Audit

Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

38. Disputes

a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Department Director or designee, the contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel.

- a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - i) Cancel the Stop Work Order; or
 - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
 - i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
 - ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAA),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS**

- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the contractor for loss of profits because of a Stop Work Order issued under this clause.

43. National Labor Relations Board Certification

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

44. Assignment of Antitrust Actions

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a quote to the State, the supplier offers and agrees that if the quote is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the quote price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i) The assignee has not been injured thereby, or
 - ii) The assignee declines to file a court action for the cause of action.

45. Drug-Free Workplace Certification

The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

40. Priority Hiring Considerations

If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

41. Covenant Against Gratuities

The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

42. Nondiscrimination Clause

- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS

- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i) The dangers of drug abuse in the workplace.
 - ii) The person's or organization's policy of maintaining a drug-free workplace.
 - iii) Any available counseling, rehabilitation and employee assistance programs.
 - iv) Penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - i) Will receive a copy of the company's drug-free policy statement; and,
 - ii) Will agree to abide by the terms of the company's statement as a condition of employment on the contract.

46. Year 2000 Compliance

Contractor warrants that it will provide only Year 2000 compliant products and/or services to the State in all present and future contracts and those Year 2000 compliant products and/or services meet the following requirements:

- a) For information technology goods and/or services, the contractor warrants and represents that the hardware, software and firmware goods and services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty and representation is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.
- b) For non-information technology goods, the contractor warrants and represents that the goods delivered under this contract are "Year 2000 compliant." For purposes of this contract, a good is Year 2000 compliant if it will continue to function fully before, at and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the contractor.
- c) Resellers must obtain written confirmation from the manufacturer that the goods and/or services are Year 2000 compliant, as defined above.

47. Forced, Convict and Indentured Labor

In accordance with PCC Section 6108, contractor warrants that no foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract are produced in whole or in part by or with the benefit of, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

48. Recycling

Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

49. Child Support Compliance Act

For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

50. Americans with Disabilities Act

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

51. 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 sub-contractors 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 \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for contract revocation.

52. CMAS Public Works Requirements (Applicable to Installation Only)

- 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 one hundred percent (100%) of the contract price. Forms shall be provided to the contractor.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS**

- 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 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 fifty (\$50.00) 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, twenty-five (\$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 insure 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.
- 53. CMAS Debarment Certification (Federally Funded Service Contracts Over \$10,000)**
- 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.
- 54. CMAS Termination of Contract**
- a) The State may terminate this contract at any time upon one-month prior written notice.
- b) If the contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered to be terminated on the same date.
- c) Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract 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.
- e) 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.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS

55. CMAS Updates and/or Changes

- a) A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:
 - i) A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
 - ii) A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
 - iii) A CMAS amendment is required for changes to contracts that require Prison Industry Authority (PIA) approval.
- b) A CMAS amendment is required to update and/or change products and services on a non-federal GSA multiple award contract.
- c) A CMAS amendment is not required to update and/or change products and services on Software Volume License Agreements.

56. CMAS Contract Amount

There is no minimum or maximum dollar amount specified by this contract nor is there any guarantee of minimum purchase of contractor's products or services by the State.

57. CMAS Purchase Order Limits

Unless otherwise stipulated in the CMAS contract, orders for information Technology products and/or services shall not exceed \$500,000 per transaction; orders for non-information Technology (commodities) products shall not exceed \$100,000 per transaction, and orders for non-Information Technology services shall not exceed \$250,000 per transaction.

58. CMAS No Additional Costs

No additional costs beyond those identified in the contract shall be incurred by the State for obtaining the products and services offered.

59. CMAS Quarterly Reports

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 707 3rd Street, 2nd Floor, West Sacramento, 95605, Attention: Quarterly Report Processing (IMS Code Z-1). A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete.

New schedules for contractors with existing schedules, and extensions or renewals of existing schedules, will be approved ONLY if the supplier has submitted to the CMAS Unit all quarterly reports due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

60. CMAS Conflict of Terms

The California Multiple Award Schedule terms and conditions shall prevail if there is a conflict between the terms and conditions of the contractor's federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents.

61. 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.

62. 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.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS),
INFORMATION TECHNOLOGY
TERMS AND CONDITIONS
GENERAL PROVISIONS

ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

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.

63. 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 ten (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.

64. 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 (SAM 8736).

65. CMAS Lease (Lease \$Mart™)

If an agency desires to lease through Lease \$Mart™, the contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

66. CMAS Risk of Loss or Damage

The State shall be relieved from all risks of loss or damage to the equipment under this contract prior to delivery and/or installation as defined in the actual purchase order except when such loss or damage is due to fault or negligence of the State.

67. CMAS Noncollusion Affidavit

Contractor hereby certifies that any quotation provided for a CMAS order or project is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the quotation is genuine and not collusive or sham; that the contractor has not directly or indirectly induced or solicited any other contractor to put in a false sham quotation, and has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham quotation, or that anyone shall refrain from quoting; that the contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any overhead, profit, or cost element of the quoted price, or that of any other contractor, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements in the quotation are true; and, further, that the contractor has not, directly or indirectly, submitted its quoted price or any breakdown thereof, of the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, quote depository, or to any member of agent thereof to effectuate a collusive or sham quotation.

68. Union Organizing

Contractor by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAA),
INFORMATION TECHNOLOGY
GENERAL TERMS AND CONDITIONS**

1. Definitions

- a) Acceptance Tests—Those tests performed during the Performance Period which are intended to determine compliance of equipment and software with the specifications and all other attachments incorporated herein by reference and to determine the reliability of the equipment.
- b) Application Program—A computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the hardware/software system, but the contractor may supply them.
- c) Attachment—A mechanical, electrical, or electronic interconnection to the contractor-supplied machine or system of equipment, manufactured by other than the original equipment manufacturer, that is not connected by the contractor.
- d) Data Processing Subsystem—A complement of contractor-furnished individual machines, including the necessary controlling elements (or the functional equivalent) and operating software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- e) Data Processing System (System)—The total complement of contractor-furnished machines, including one or more central processors (or instruction processors) and operating software, which are acquired to operate as an integrated group.
- f) Designated CPU(s)—For each product, the term "Designated CPU(s)", if applicable, means the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the contract, the term shall mean any and all CPUs located at the site specified therein.
- g) Documentation—Nonproprietary manuals and other printed materials that are necessary or useful to the State in its use or maintenance of the equipment or software provided hereunder.
- h) Equipment—An all-inclusive term which refers either to individual machines or to a complete data processing system or subsystem, including its hardware and operating software (if any).
- i) Equipment Failure—A malfunction in the equipment, excluding all external factors, which prevents the accomplishment of the equipment's intended function(s). If microcode or operating software residing in the equipment is necessary for the proper operation of the equipment, a failure of such microcode or operating software which prevents the accomplishment of the equipment's intended functions shall be deemed to be an equipment failure.
- j) Facility Readiness Date—The date specified in the purchase order or Statement of Work by which the State must have the site prepared and available for equipment delivery and installation.
- k) Hardware—Usually refers to computer equipment and is contrasted with software. See also Equipment.
- l) Installation Date—The date specified in the purchase order or Statement of Work by which the contractor must have the ordered equipment ready (certified) for use by the State.
- m) Information Technology—includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
- n) Information Technology Services—Services performed directly on or pertaining to electronic technology and telecommunications hardware, firmware, and software including, but not limited to, computerized and auxiliary automated information handling, system design and analysis, data conversion, computer programming, information storage and retrieval, voice, video, data communications, requisite system controls, simulation, electronic commerce, maintenance and repair, software licensing and support, and training, and all related interactions between people and machines. Also included are services of an advisory nature requiring a recommended course of action or personal expertise as it pertains to information technology project and information technology support functions.
- o) Machine—An individual unit of a data processing system or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electromechanical, and electronic parts, microcode, and special features installed thereon and including any necessary software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- p) Machine Alteration—Any change to a contractor-supplied machine which is not made by the contractor, and which results in the machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- q) Maintenance Diagnostic Routines—The diagnostic programs customarily used by the contractor to test equipment for proper functioning and reliability.
- r) Mean Time Between Failure (MTBF)—The average expected or observed time between consecutive failures in a system or component.
- s) Mean Time to Repair (MTTR)—The average expected or observed time required to repair a system or component and return it to normal operation.
- t) Operating Software—Those routines, whether or not identified as program products, that reside in the equipment and are required for the equipment to perform its intended function(s), and which interface the operator, other contractor-supplied programs, and user programs to the equipment.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAA),
INFORMATION TECHNOLOGY
GENERAL TERMS AND CONDITIONS**

- u) Operational Use Time—For performance measurement purposes, that time during which equipment is in actual operation by the State. For maintenance operational use time purposes, that time during which equipment is in actual operation and is not synonymous with power on time.
- v) Performance Testing Period—A period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed equipment and software prior to its acceptance by the State.
- w) Period of Maintenance Coverage—The period of time, as selected by the State, during which the contractor provides maintenance services for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- x) Preventive Maintenance—That maintenance, performed on a scheduled basis by the contractor, which is designed to keep the equipment in proper operating condition.
- y) Principal Period of Maintenance—Any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- z) Programming Aids—Contractor-supplied programs and routines executable on the contractor's equipment that assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines. (tape-to-disk routines, disk-to-print routines, etc.).
- aa) Program Product—Programs, routines, subroutines, and related items which are proprietary to the contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- bb) Remedial Maintenance—That maintenance performed by the contractor that results from equipment (including operating software) failure, and which is performed as required, i.e., on an unscheduled basis.
- cc) Site License—For each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the purchase order or Statement of Work.
- dd) Software—An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the contractor, including operating software, programming aids, application programs, and program products.
- ee) Software Failure—A malfunction in the contractor-supplied software, other than operating software, which prevents the accomplishment of work, even though the equipment (including its operating software) may still be capable of operating properly. For operating software failure, see definition of equipment failure.
- ff) System — The complete collection of hardware, software, and services as described in this contract, integrated and functioning together, and performing in accordance with this contract.

2. Documentation

- a) The contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the purchase order or Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the equipment or software provided hereunder. The contractor agrees to provide additional documentation at prices not in excess of charges made by the contractor to its other customers for similar documentation.
- b) If the contractor is unable to perform maintenance or the State desires to perform its own maintenance on equipment purchased under this contract then upon written notice by the State the contractor will provide at contractor's then current rates and fees adequate and reasonable assistance including relevant documentation to allow the State to maintain the equipment based on contractor's methodology. The contractor agrees that the State may reproduce such documentation for its own use in maintaining the equipment. If the contractor is unable to perform maintenance, the contractor agrees to license any other contractor that the State may have hired to maintain the equipment to use the above noted documentation. The State agrees to include the contractor's copyright notice on any such documentation reproduced, in accordance with copyright instructions to be provided by the contractor.

3. Limitation of Liability

- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the greater of \$200,000 or the purchase price stated herein that are the subject matter of or are directly related to the cause of action. In those instances where contractor has failed to perform as called for by the contract, the Limitation of Liability provided above shall not limit any right to recover the 'Cost to Cover.' 'Cost to Cover' means the cost of procuring a machine or machines of equivalent (not greater) capability, function, and performance, less the contractor quote price.
- b) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph of the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by contractor's negligence. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this contract.
- c) State's liability for damages for any cause whatsoever, and regardless of the form of action whether in contract or in tort, excluding negligence, shall be limited to the greater of \$200,000 or the purchase price stated herein that are the subject matter of or are directly related to the cause of action.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
GENERAL TERMS AND CONDITIONS**

- d) In no event will either the contractor or the State be liable for consequential damages even if notification has been given as to the possibility of such damages.

4. Rights in Data

- a) All technical communications and records originated or prepared by the contractor pursuant to this contract including papers, reports, charts, computer programs, and other documentation, but not including contractor's administrative communications and records relating to this contract shall be delivered to and shall become the exclusive property of the State and may be copyrighted by the State.
- b) The ideas, concepts, know-how, or techniques relating to data processing developed during the course of this contract by the contractor or jointly by the contractor and the State can be used by either party in any way it may deem appropriate.
- c) All inventions, discoveries, or improvements of the computer programs developed pursuant to this contract shall be the property of the State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the contractor program or any other such person and further agrees that the contractor or any other such person may sublicense additional persons on the same royalty-free basis.
- d) This contract shall not preclude the contractor from developing materials outside this contract that are competitive, irrespective of their similarity to materials that might be delivered to the State pursuant to this contract.

5. Protection of Proprietary Software and Other Proprietary Data

- a) State agrees that all material appropriately marked or identified in writing as proprietary and furnished hereunder are provided for State's exclusive use for the purposes of this contract only. All such proprietary data shall remain the property of the contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

6. CMAS Follow-On Contracts for Consultant Services in Feasibility Studies and EDP Acquisition (SAM 5202)

No person, firm, or subsidiary thereof who has been awarded a consulting services contract, or a contract which includes a consulting component, may be awarded a contract for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant that contracts with a state agency to develop a feasibility study or provide formal recommendations for the acquisition of information technology products or services is precluded from contracting for any work recommended in the feasibility study or the formal recommendation.

7. CMAS Progress Payments/Performance Bonds

In accordance with PCC 12112:

Any contract for information technology goods or services to be manufactured or performed by the contractor especially for the State and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that 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 or services, 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.

8. Indemnification

Notwithstanding the "Indemnification" provision in the General Provisions, contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses, with the exception of consequential damages, accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by contractor in the performance of this contract.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
PURCHASE SPECIAL PROVISIONS**

1. Liquidated Damages

a) General

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 purchase order or 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.

b) Delivery Delays

- i) If the contractor does not deliver all the deliverables listed on the purchase order or Statement of Work ready for use in substantial accordance with the contractor's specifications, on or before the Delivery Dates specified in the purchase order or Statement of Work, the contractor shall be liable for liquidated damages in the amounts specified in the purchase order or Statement of Work, in lieu of all other damages for such nondelivery. Liquidated damages shall accrue for each calendar day between the Delivery Date specified and the actual date of the delivery of such deliverables or for 180 days, whichever occurs first. If the contractor fails to provide the software listed in the purchase order or Statement of Work by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to listed software for which substituted software is provided.
- ii) If the State is unable to use the equipment on the installation date because contractor failed to deliver the software listed in the purchase order or Statement of Work by the Delivery Date specified in the purchase order or Statement of Work, and contractor does not furnish suitable substitute software acceptable to the State, liquidated damages for equipment noninstallation shall be paid to the State in lieu of damages for software nondelivery. Such liquidated damages shall apply until the State uses the equipment or until contractor provides the programming aids, program products, or applications which would render the equipment usable, whichever occurs first, but not for more than 180 calendar days.

2. Title to Equipment

Unless otherwise specified in the purchase order or Statement of Work, title to the equipment shall remain in the contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the machine on which it was installed.

3. CMAS Connection Points for Central Processor Evaluation Equipment

If requested by the State, the contractor agree to identify, on all items of equipment supplied under this contract, all appropriate test points for connecting one of the commercially available hardware monitors designed to measure system activity.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
MAINTENANCE SPECIAL PROVISIONS**

AGENCIES SHOULD DEVELOP AND INCLUDE A STATEMENT OF WORK (SOW) WITH THE PURCHASE ORDER.

4. Maintenance Coverage

1. Maintenance of Equipment

The contractor is responsible under this contract to maintain the equipment identified in the purchase order or Statement of Work. The contractor shall keep the equipment in good operating condition and shall always be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with this contract, with the period of maintenance coverage, locations, etc. listed in the purchase order or Statement of Work.

2. Responsibilities of the Contractor

- a) This maintenance service includes the following and may be further described in the purchase order or Statement of Work:
 - i) Scheduled preventive maintenance based upon the specific needs of the individual machines as determined by manufacturer.
 - ii) Unscheduled, on-call remedial maintenance. Such maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by the contractor.
- b) Maintenance parts will be furnished by contractor and will be new or equivalent to new in performance when used in these machines. Replaced maintenance parts become the property of the contractor.
- c) Preventive maintenance shall be performed on a schedule which is mutually acceptable to the State and the contractor, which is consistent with the State's operating requirements, and which is based upon the specific needs of the equipment as determined by the manufacturer. Such schedules shall be in writing and shall specify the frequency and duration of preventive maintenance for the equipment in the purchase order or Statement of Work.
- d) Remedial maintenance shall be commenced promptly after notification by an authorized State representative that equipment and/or software are inoperative.

3. Responsibilities of the State

- a) The State shall provide an appropriate operating environment, including temperature, humidity, and electrical power, in accordance with the environmental requirements contained in the contractor's published specifications for the equipment listed on the purchase order or Statement of Work.
- b) Unless mutually agreed to by the contractor and the State, State personnel will not perform maintenance or attempt repairs to the equipment while such equipment is governed by the terms of this contract.
- c) Subject to the State's security regulations, the contractor shall have full and free access to the machines to provide service thereon.

a) Period of maintenance coverage:

- i) The State may select a period or periods of maintenance coverage, as provided for in the contract and stated in the Statement of Work, in accordance with the following:
 - A minimum monthly maintenance charge entitles the State to maintenance coverage during the Principal Period of Maintenance.
 - The State may select in lieu of the hours available for the minimum monthly maintenance charge, one or more of the optional periods of maintenance coverage for an additional charge as shown in the contract.
- ii) The hours of maintenance coverage for a machine on Monday through Friday shall be the same each day and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays. All machines covered under this contract must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any machine in the system.
- iii) The State may change its selected period of maintenance coverage by giving contractor fifteen (15) days prior written notice.

b) Preventive Maintenance (scheduled)

Unless otherwise stated in the Statement of Work (SOW), preventive maintenance can either be performed within or outside of the Principal Period of Maintenance (PPM). An additional charge may be made for preventive maintenance to be performed outside of the PPM, as set forth in the contract. No additional charge shall be made for preventive maintenance that is to be performed within the PPM.

c) Remedial Maintenance (unscheduled)

Unless otherwise stated in the Statement of Work (SOW):

- i) Remedial maintenance shall be performed after notification by authorized State personnel that the equipment is malfunctioning.
- ii) The contractor shall provide the State with a designated point of contact and will initiate the remedial maintenance.
- iii) There shall be no additional maintenance charges for:
 - Remedial maintenance during the period of maintenance coverage unless the remedial maintenance is due to the fault or negligence of the State.
 - Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has been commenced.
 - Remedial maintenance required because the scheduled preventive maintenance preceding the malfunction had not been performed, unless the State had failed to provide access to the equipment.
 - For time of delay beyond the PPM, contractor shall continue to perform maintenance for the same amount of time outside the covered period without additional charge to the State.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
MAINTENANCE SPECIAL PROVISIONS**

- The first hour of work performed when remedial maintenance service is requested during the covered period of maintenance and the actual work is begun outside such period.

- b) The charges of the contractor to dismantle and pack the equipment and installation at the new location shall be at the rates set forth in the contract. The State agrees to pay all costs incidental to any move, including costs for packing, crating, rigging, transportation, unpacking, uncrating, insurance, installation, and State and local sales tax, if any; unless the federal GSA (or other base contract) stipulates otherwise.
- c) If contractor is responsible for the move, no re-certification charges to confirm continued maintenance eligibility would be applicable. If the move is conducted by other than contractor, State agrees to pay re-certification charges to contractor at rates set forth in the contract.

5. Maintenance Charges

- a) The maintenance charges described include all maintenance costs, and the State will pay no additional charges unless specifically set forth in this contract. Maintenance rates shall be firm for the contract period subject to any maximum annual maintenance escalation as set forth in the contract.
- b) Unless otherwise stated in the Statement of Work (SOW), maintenance charges for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable Total Monthly Maintenance Charge, for each day maintenance was provided.
- c) There will be no charge for travel expense associated with maintenance service or programming service under this contract except that actual travel expenses will be charged in those instances where the site at which the machine is located is not normally accessible by private automobile or scheduled public transportation.
- d) If the contract provides for travel, state agencies may pay travel and per diem expenses according to state travel time and per diem rules (represented employee rates) with verified receipts.

9. Termination

Notwithstanding the Termination for Convenience provisions contained in the General Provisions, upon thirty (30) days' written notification to the contractor, State may terminate, at no cost to the State, maintenance for all or any portion of the equipment identified in the purchase order or the Statement of Work.

6. Maintenance Credit for Inoperative Machines

From the time the State notifies the contractor the machine was inoperative, the contractor shall grant a proportionate maintenance credit on a machine shown in the purchase order or Statement of Work when the machine is inoperative for consecutive scheduled work periods totaling the number of hours specified in the Statement of Work (SOW) provided (1) the machine became inoperative through no fault of the State, and (2) the breakdown was attributable to equipment failure. The credits to be granted by the contractor to the State shall be as reflected in the purchase order or Statement of Work.

7. Engineering Changes

Engineering changes, determined applicable by contractor, will be controlled, and installed by contractor on equipment covered by this contract. The State may elect to have only mandatory changes, as determined by contractor, installed on machines so designated. A written notice of this election must be provided to the contractor for confirmation. There shall be no charge for engineering changes made. Any contractor-initiated change shall be installed at a time mutually agreeable to the State and the contractor. Contractor reserves the right to charge, at its then current time and material rates, for additional service time and materials required due to noninstallation of applicable engineering changes after contractor has made a reasonable effort to secure time to install such changes.

8. Relocation of Equipment

- a) In the event the equipment being maintained under the terms and conditions of this contract is moved to another location within the State of California, the contractor shall continue to maintain the equipment at the new location.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
PERSONAL SERVICES SPECIAL PROVISIONS**

AGENCIES MUST DEVELOP AND INCLUDE A STATEMENT OF WORK (SOW) WITH THE PURCHASE ORDER (SEE BELOW).

1. Personnel

- a) Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.
- b) The State reserves the right to disapprove the continuing assignment of contractor personnel provided to the State under this contract. If the State exercises this right, and the contractor cannot immediately replace the disapproved personnel, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.
- c) The contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the contractor reserves the sole right to determine the assignment of its employees. If a contractor employee is unable to perform due to illness, resignation, or other factors beyond the contractor's control, the contractor will make every reasonable effort to provide suitable substitute personnel.
- d) In recognition of the fact that contractor personnel providing services under this contract may perform similar services from time to time for others, this contract shall not prevent contractor from performing such similar services or restrict contractor from using the personnel provided to the State under this contract, providing that such use does not conflict with the performance of services under this contract.

2. Responsibilities of the State

- a) The State shall provide normal office working facilities and equipment necessary for contractor performance under this contract. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the purchase order or Statement of Work.
- b) The State is responsible for providing required information, data, documentation, and test data to facilitate the contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the purchase order or Statement of Work.
- c) Delay or failure by the State to fulfill the above described responsibilities, such that the contractor is prevented from performing in accordance with the applicable purchase order or Statement of Work, may result in additional costs to the State and deviations from previously agreed upon work schedules. Should the contractor determine that a delay exists, or is probable due to failure of the State, the contractor will notify the State in writing immediately.

3. Unanticipated Tasks

In the event that additional work must be performed which was wholly unanticipated, and which is not specified in the purchase order or Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the agency must prepare an amendment to the purchase order to include the unanticipated work before the contractor can commence with the work.

4. Invoicing and Payment for Services

- a) During the execution of each task which involves the delivery to the State of identified deliverable items, the contractor may submit periodically to the State invoices reflecting a pro-rata cost of the task, determined on the basis of the lesser of either:
 - i) The number of deliverables provided to the State divided by the total number of deliverables required to be delivered to the State, less the percentage specified in the statement of work, less any amounts previously invoiced; or
 - ii) The number of work-hours expended by the contractor in the performance of the task divided by the number of work hours scheduled for the task, less the percentage specified in the statement of work, less any amounts previously invoiced.
- b) For those tasks which do not involve delivery to the State of identified deliverable items, but which are of a continuing nature, the contractor may submit invoices reflecting a pro-rata cost of the task, less the percentage specified in the statement of work, but no less than 10 percent, less any amount previously invoiced. Actual progress payment amounts for such tasks must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.
- c) Upon completion of a task to the satisfaction of the State, the full charge for such task, less amounts previously invoiced to the State may be submitted for payment. However, this is only applicable when the benefits of completion of a task can be fully utilized without completion of a subsequent task.
- d) Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.
- e) In the aggregate, invoices reflecting progress payments will not exceed 90 percent of the ceiling amount of the contract, with the balance to be invoiced upon satisfactory completion of the contract.

See Information Technology General Terms and Conditions for CMAS Progress Payments/Performance Bonds.

5. Contractor Evaluation

In accordance with the California Government Code, contractor performance evaluation will be completed within the guidelines of the State Contracting Manual, Section 9.08. The State-contracting agency, upon contract completion, will complete and forward the contractor evaluation to the Department of General Services, Office of Legal Services.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
PERSONAL SERVICES SPECIAL PROVISIONS**

6. Statement of Work (SOW)

Any Statement of Work attached hereto may consist of a detailed statement of the purpose, objective, or goals to be undertaken by the contractor, the job classification or approximate skill level of the personnel to be made available by the contractor, an identification of all significant material to be developed by the contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the contractor, an estimated time schedule for the provisions of these services by the contractor, completion criteria for the work to be performed, the name or identification of the contractor personnel to be assigned, the contractor's estimated work hours required to accomplish the purpose, objective or goals, the contractor's billing rates per work hour (as provided in the contract), and the contractor's estimated total cost.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
SOFTWARE SPECIAL PROVISIONS**

AGENCIES SHOULD DEVELOP AND INCLUDE A STATEMENT OF WORK (SOW) WITH THE PURCHASE ORDER.

1. License Grant

- a) Contractor hereby grants to the State and the State accepts from contractor, subject to the terms and conditions of this contract, a non-exclusive, non-transferable license to use the Software Products listed in the purchase order or Statement of Work of this contract (hereinafter referred to as "Software Products").
- b) State may use the Software Products in the conduct of its own business, and any division thereof.
- c) The license granted above authorizes the State to use the Software Products in machine-readable form on the computer system located at the site(s) specified in the purchase order or Statement of Work. Said computer system and its associated units (collectively referred to as CPU) are as designated in the purchase order or Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
- d) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.

2. Encryption/CPU ID Authorization Codes

- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the contractor will provide all codes to the State with delivery of the software.
- b) In case of an inoperative CPU as defined in paragraph 1c. above, contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
- c) When changes in designated CPUs occur, the State will notify the contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

3. Fees and Charges

Upon acceptance of Software by State, in accordance with Paragraphs 5 herein and the purchase order or Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in purchase order or Statement of Work. Charges will commence on the Acceptance Date as established in the purchase order or Statement of Work. The contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.

4. Maintenance

- a) The correction of any residual errors in any Software Product that may be discovered by contractor or by the State will be considered maintenance. Such maintenance will be performed by contractor without additional charge for the duration of this contract. Suspected errors discovered by the State in the Software Products will be handled by the following procedures:
 - i) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to contractor along with a completed copy of the appropriate contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.
 - ii) Errors in the Software Product as verified by contractor will be corrected by providing a new copy of said Software Product (or of the affected portions) in machine-readable form.
 - iii) The contractor shall attempt to correct Software Product errors within a reasonable time.
- b) Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular hardware or operating system at rates in accordance with the contract.
- c) If contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, machine or operator failure, or due to any other cause not inherent in the original Software Products, contractor reserves the right to charge State for such service at rates provided in the contract.

5. Acceptance of Software

The State shall be deemed to have accepted each Software Product unless State, within thirty (30) days from the Installation Date, gives contractor written notice to the effect that the Software Product fails to conform to the functional and performance specifications of this contract. Contractor will, upon receipt of such notice, investigate the reported deficiencies. The rights of the parties shall be governed by the following:

- a) If it is found that the Software Product fails to conform to the contract requirements, and contractor is unable to remedy the deficiency within the timeframe identified in the purchase order or Statement of Work, State shall return all material furnished hereunder. The State shall have the option of accepting substitute software (as available in the CMAS contract), terminating this portion of the contract, or terminating this contract in its entirety and placing the contractor in default.
- b) If it is found that the Software Product fails to conform to the contract requirements and the contractor within sixty (60) days of receipt of the above said notice corrects the deficiencies in the Software Product, the State will provide contractor with written acknowledgement of its acceptance of said Software Product.
- c) If it is found that the Software Product does, in fact, conform to the contract requirements, the State shall reimburse contractor for the time and material cost of the investigation at contractor's rates in accordance with the contract.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
SOFTWARE SPECIAL PROVISIONS

6. Right To Copy or Modify

- a) Any Software Product provided by contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the purchase order or Statement of Work will be in existence under this contract at any one time without prior written consent from contractor. The contractor shall not unreasonably withhold such consent. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the contractor.
- b) The State agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Software Product to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.
- c) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this contract.

7. Future Releases

If improved versions of any Software Product are developed by contractor, and are made available to other licensees, they will be made available to the State at the State's option at the contract price or lower.

8. Acceptance Testing for Software (other than Operating Software)

- a) Acceptance testing is required for all contractor-supplied software supplied under this contract and listed on the purchase order or Statement of Work, including all software initially installed, improved versions (new releases) of this software, any such software which has been altered (modified) by the contractor to satisfy State requirements, and any substitute software provided by the contractor in lieu thereof, unless purchase order or Statement of Work provides otherwise. The purpose of the Acceptance Test is to ensure that the software operates in substantial accord with the contractor's technical specifications and meets the State's performance specifications. The specific procedures for the accomplishment of such tests are contained in the purchase order or Statement of Work.
- b) When contractor has notified the State in writing that the software is installed and ready for use, or if installation is not required by contractor, when software has been delivered to State, the State shall begin Acceptance Testing on the first State workday following such certification or delivery, unless otherwise provided in the purchase order or Statement of Work.

- c) If successful completion of the Acceptance Test is not attained within the timeframe as specified in the purchase order or Statement of Work, the State shall have the option to request substitute software, cancel that portion of the contract that relates to the unaccepted software, or continue the Acceptance Tests. The State's option shall remain in effect until such time as the tests are successfully performed, or the timeframe as specified in the purchase order or Statement of Work, whichever occurs first. If the Acceptance Tests have not been successfully performed prior to the expiration of the timeframe specified in the purchase order or Statement of Work, that portion of the contract that relates to the unaccepted software shall be canceled, unless both parties agree to the continuation of the tests or to the delivery of substitute software. If the unaccepted software (or its functional equivalent) is crucial to the accomplishment of the work for which the equipment was acquired, and is so identified in the purchase order or Statement of Work, the State shall have the option of terminating the entire contract in accordance with the Termination for Default provision in the contract.
- d) Unless otherwise provided in the purchase order or Statement of Work, software shall not be accepted by the State and no charges associated with such software shall be paid by the State until the software has satisfactorily completed the Acceptance Tests. Immediately upon successful completion of the Acceptance Testing, the State shall notify the contractor in writing of the acceptance of the software and authorize appropriate payment.

9. CMAS Subscriptions

Software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the contract or purchase order.