

The following is a list of documents which should be included in your Internet Package.

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California Disabled Veteran Business Enterprise (DVBE) Program Requirements	<b>Electronic</b> <a href="https://www.dgs.ca.gov/PD/About/Pag e-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program">https://www.dgs.ca.gov/PD/About/Pag e-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program</a>	
Disabled Veteran Business Enterprise Declarations, DGS PD 843	<b>Electronic</b> <a href="https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd_843.pdf">https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd_843.pdf</a>	1
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Darfur Contracting Act Certification, ADM-0077	<b>Electronic</b> <a href="https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM0077">https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM0077</a>	1
Iran Contracting Act Certification, ADM-0078	<b>Electronic</b> <a href="https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM0078">https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM0078</a>	1
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**DEPARTMENT OF TRANSPORTATION**

ADMINISTRATION

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a California Way of Life.*

December 24, 2021

**Request for Proposal  
Notice to Prospective Proposers  
RFP Number 95A0080**

You are invited to review and respond to this **Request for Proposal (RFP) Number 95A0080**, titled **Caltrans Clean California Public Education Campaign**. In submitting your proposal, you shall comply with the instructions found herein. In addition to those programs and preferences that are specified in this solicitation, Prospective Contractors are encouraged to consider programs and preferences that are available, such as those for the use of small businesses, disadvantaged businesses, disabled veteran businesses, and other businesses covered by State programs and preferences.

The Department of Transportation (Caltrans) is committed to meeting the State's 25% Small Business participation goal, as required by Governor Executive Order S-02-06 and want to encourage Certified Small Businesses (SB), Microbusinesses (MB), and any Contractors willing to commit to subcontracting a minimum of 25% of their net bid price to certified SB or MB to submit proposals.

The Disabled Veteran Business Enterprise (DVBE) Participation Program applies and a **five percent (5%)** goal is required for this RFP. The DVBE Incentive Program may also apply to this RFP. See **Section D, Special Programs, Item 1**, in this RFP for requirements.

Note that all Agreements entered into with Caltrans will include, by reference, General Terms and Conditions (GTC 04/2017) and Contract Certification Clauses (CCC 04/2017) that may be viewed and downloaded at Internet site <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>

The designated contact person for this RFP is:

Laurie Noble  
**Department of Transportation**  
Email address: [laurie.noble@dot.ca.gov](mailto:laurie.noble@dot.ca.gov)  
Phone: (279) 234-2411

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

Technical questions regarding this solicitation will be addressed, in writing, in accordance with the Questions and Answers portion of this RFP. **See Section C) 1**, Questions and Answers for more details.

Sincerely,

LAURIE NOBLE  
Contract Analyst

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## A) Purpose and Description of Services

The California Department of Transportation (Caltrans) is seeking proposals from qualified full-service, professional proposers with sufficient resources, experience, and ability to provide an array of communication services and educate the public-at-large, as well as specific audiences, regarding the \$1.1 billion Clean California program. The program will reduce trash, expand efforts to remove trash from state thoroughfares, and enhance local streets and public spaces by working in collaboration with cities, counties, tribes, transit agencies, and private sector partners to fund local beautification and litter abatement projects.

The selected consultant will assist Caltrans in the development and execution of a three-year, multi-faceted public outreach initiative to create a variety of well-coordinated and complementary statewide marketing campaigns, public relations activities, and media services designed to educate the public about Clean California and to change their behavior. By doing so, Caltrans and the selected consultant will create a deep, widespread, quantifiable, and sustainable cultural shift in public attitudes by engendering community pride and enthusiastic, effective civic action based on a shared understanding that will empower California to successfully address the interrelated economic, environmental, aesthetic, and public health problems caused by trash, littering, and illegal dumping. Education is a vital tool. It is necessary to create a cultural shift of shared responsibility for the cleanliness of our roadways through litter prevention education campaigns that focus on properly throwing away trash and the impact littering has on natural resources, waterways, public safety and health. Although it is a new program, the Clean California campaign will build upon previous anti-litter campaigns such as Protect Every Drop and Don't Trash California.

The successful proposal will include a scope of work that lays out an approach to behavioral and market research, social marketing, advertising, public relations, public outreach, and gathers quantitative data to gauge effectiveness. The campaign shall be motivational and usable across California.

Services to be provided include, but are not limited, to the following:

- Creating a Strategic Marketing and Communications Plan that ensures the priorities of diversity, equity, and inclusion are integral components of all Clean California activities and collateral. The Communication plan should provide an overall framework that meets the messaging needs of the state while providing flexibility to address regional issues, demographics and opportunities.
- Creating an Advertising Plan and products for traditional and non-traditional print, broadcast, digital, and social media.
- Promoting the different programs within the Clean California program.
- Coordinating statewide Media Relations.
- Conducting Public Outreach and Engagement.
- Recruiting young adults and businesses for Adopt-a-Highway participation.
- Creating an educational outreach strategy for school-age kids.
- Leveraging free partnerships with public figures (movie, sports, music, etc.) in the state of California that represent the diverse communities in the state.
- Leveraging relationships with non-profit organizations that are devoted to litter campaigns.

### **Background**

Trash has plagued California's streets and highways for decades, undermining Caltrans' vast public transportation system's safety, efficiency, and aesthetics, as well as compromising the department's commitment to addressing social equity and environmental impacts. Caltrans spends \$60 million annually to remove litter from the highway, taxpayer dollars that could be invested elsewhere in maintaining the state's highways. To address the many interconnected problems posed by trash,

the \$1.1 billion Clean California initiative will beautify communities through litter pick-up, community engagement, local projects and public education thereby transforming unsightly roadsides into shared public spaces of pride for all Californians.

Clean California will potentially fund projects in all of the state's 58 counties, with a third of the funds going directly to cities, counties, tribes, and transit agencies to clean local streets and public spaces, creating career opportunities and jobs for veterans, students, artists, people experiencing homelessness, and those re-entering society from incarceration. Specifically, Clean California aims to invest: \$418 million in litter abatement over three years; \$287 million in state beautification projects over two years; \$296 million in local beautification projects over two years; \$62 million in project design, construction, local support and engagement; as well as \$33 million for a three-year series of innovative and motivational public education campaigns. Showing progress will be crucial to help justify the need for additional funding.

Key Action Areas:

- Engage & Invest in Communities: Create jobs while cleaning and beautifying local roads through community grants.
- Education: Drive a cultural shift of shared responsibility for the cleanliness of our roadways through litter prevention education campaigns that focus on properly throwing away trash and the impact littering has on natural resources, waterways, public safety and health.
- Expand Litter Removal: Significantly reduce trash from state highways and local roads by strengthening trash collection by Caltrans, community service programs and Adopt-a-Highway volunteers. Increase access to waste facilities and provide free monthly disposal sites throughout the state.
- Enhance Infrastructure: Implement sustainable beautification projects.

Refer to the Proposed Form of Agreement, which is attached to this RFP as **Attachment 10 (Exhibit A)** for a more complete description of services.

Program Overview

1. Caltrans has identified priority program areas for Clean California funding. These programs include educating specific audiences of the general public to change behavior regarding:
  - a. The impact of trash in general.
  - b. The negative impact of trash on natural resources, including water resources.
  - c. The negative impact of trash on public safety and health.
  - d. The importance of employing best practices for litter prevention and waste disposal.
  - e. The availability and importance of using appropriate waste disposal resources.
  - f. The importance of properly recycling trash and garbage waste.
  - g. The importance of properly securing loads for transportation and transfer.
  - h. The importance of the public contributing through litter prevention and volunteering.
2. The selected Clean California public outreach consultant shall ensure that media buys consistently and creatively promote equity and inclusiveness.
3. The Clean California public outreach shall support ongoing public relations efforts such as:
  - a. Leveraging public-private partnerships.
  - b. Fostering public engagement through coordinated trash collection days of volunteering.

- c. Promoting community engagement/grassroots outreach.
  - d. Emphasizing educational outreach to the K-12 demographic.
  - e. Building on existing efforts that have records of successfully combating the blight of trash.
4. The selected Clean California public outreach consultant shall collaborate closely with Caltrans and its partners and stakeholders to produce creative content such as:
- a. Public service advertising that potentially features celebrities and social media influencers and promotional materials (Letters of commitment requested).
  - b. Audience-specific musical and photography, video products, visual/graphic art, art installations, community cultural events, and public-private exhibits/events, etc.
  - c. Website design and content development to provide a variety of educational messages that will publicize the Clean California programs.
  - d. Social Media content, including messaging, photos, and video, will design and develop to provide a variety of educational messages that will publicize the Clean California programs through paid and unpaid media.
5. The selected Clean California public outreach consultant shall conduct market research by:
- a. Compiling quantitative and qualitative research of behavior and campaign effectiveness.
  - b. Conducting message testing with target markets through formative assessment and research at predetermined intervals.
  - c. Collecting and analyzing statewide quantitative data before and at predetermined intervals during the campaign to measure the impact of the Clean California campaign on the public's behavior regarding litter, trash and illegal dumping.

### **Scope of Work**

1. Contractor shall organize and coordinate a comprehensive statewide advertising campaign and marketing program and provide public relations and outreach activities to promote the Clean California programs and raise litter and pollution awareness in the state.
2. Campaign elements shall include:
  - a. General Market Outreach (ages 18-49)
  - b. Targeted Hispanic outreach (non-English speakers)
  - c. Targeted non-English speaker outreach (excluding Spanish speakers)
  - d. Targeted young adult outreach (ages 20-35) for volunteering
  - e. Targeted business outreach for corporate volunteering
  - f. Targeted youth outreach (educational program, K-12)
  - g. Targeted community/grassroots group engagement
3. The contractor shall develop a statewide anti-litter advertising campaign that includes, but is not limited to, paid advertising, paid digital media, outdoor media, sponsorships, radio and television.
4. The contractor shall develop a statewide anti-litter public affairs and marketing program that includes, but is not limited to, social media, public service advertising, website design and content development and updates, and outreach.

5. The contractor shall, on an ongoing basis, continue to build strategic public and private partnerships that will help maximize resources, or added value, and increase the effectiveness of the campaign.
6. The contractor shall develop a volunteer recruitment marketing program for the Adopt-a-Highway program. The program is offering stipends of up to \$250 for litter clean-up to its volunteers.
7. The contractor shall effectively incorporate creative messaging for school-aged audiences.
8. The contractor shall conduct market research such as focus groups to test the contractor's proposed creative ideas, if applicable.
9. The contractor shall measure campaign effectiveness by conducting and completing an awareness study.
10. The contractor shall design and develop content for the website and provide updates throughout the campaign providing a variety of educational messages that publicize the Clean California programs.
11. The contractor shall develop content for social media platforms and provide updates throughout the campaign that provide a variety of educational messages publicizing the Clean California programs.
12. The contractor shall arrange media coverage and assist with the coordination of the annual Clean California Day of Action event.
13. Public service advertising that potentially feature celebrities and social media influencers and promotional materials (Letters of commitment requested).
14. Audience-specific musical and photography, video products, visual/graphic art, art installations, community cultural events, and public-private exhibits/events, etc.
15. Website design and content development to provide a variety of educational messages that will publicize the Clean California programs.
16. Social Media content, including messaging, photos, and video, will design and develop to provide a variety of educational messages that will publicize the Clean California programs through paid and unpaid media.
17. The contractor shall conduct market research by:
  - a. Compiling quantitative and qualitative research of behavior and campaign effectiveness.
  - b. Conducting message testing with target markets through formative assessment and research at predetermined intervals.
  - c. Collecting and analyzing statewide quantitative data before and at predetermined intervals during the campaign to measure the impact of the Clean California campaign on the public's behavior regarding litter, trash and illegal dumping.

## **B) Minimum Qualifications for Proposers**

Information regarding the required minimum qualifications must be provided in the Qualifications and Experience Section of the Technical Proposal. Refer to **Section C) 4. A5)**.

To be considered qualified to complete for this work, proposer must demonstrate the following minimum qualifications:

1. The Proposer (Prime Contractor) or its parent company must have five (5) years of experience in Public Relations Services.



2. If the Proposal includes the use of a Media Buying House, the Media Buying House must have at least five (5) years of media buying experience.
3. The Proposer's team (prime and/or subcontractors) must have completed a minimum of two (2) advertising campaigns with an average annual gross media budget of not less than one and a half (\$1.5) million dollars.
4. The Prime Contractor must have an office location in the State of California.

**C) Proposal Requirements and Information**

**1. Time Schedule**

It is recognized that time is of the essence. All proposers are hereby advised of the following schedule and will be expected to adhere to the required dates and times.

Event	Date	Time (Pacific Time)
RFP available to prospective proposers	Dec. 24, 2021	
Optional Pre-Proposal Teleconference	Jan. 10, 2022	9:00 am
Written Question Submittal	Jan. 13, 2022	
Final Date for Proposal Submission	Feb. 3, 2022	2:00 pm
Oral Interviews (estimate)	Week of Feb. 14, 2022	
Posting of Notice of Intent to Award (estimate)	Week of Feb. 21, 2022	
Proposed Agreement Award Date (estimate)	Week of Feb. 28, 2022	

**2. Optional Pre-Proposal Conference**

- A. An optional pre-proposal telephone conference will be held at **9:00 AM on Jan. 10, 2022**, for the purpose of discussing this RFP.

**Teleconference Dial-In Number:** 888-913-8613

**Participant Code:** 9176421

- B. An authorized representative may attend the optional pre-proposal teleconference on behalf of a potential prime contractor. The representative may only sign-in for one (1) company. Subcontractors may not represent a potential prime contractor at optional pre-proposal conference.
- C. For proposers who need assistance due to a physical impairment, a reasonable accommodation will be provided upon request for the optional pre-proposal conference. The proposer must call the designated Contract Analyst no later than the fifth working day prior to the scheduled date and time of the Pre-Proposal Conference to arrange for a reasonable accommodation.

**3. Questions and Answers**

- A. Questions regarding this RFP must be submitted in writing by **Jan. 13, 2022**. Proposers are encouraged to submit their written questions via e-mail to [Laurie.Noble@dot.ca.gov](mailto:Laurie.Noble@dot.ca.gov).
- B. Written questions must include the individual's name, firm name, complete address and must reference **RFP No. 95A0080**. Questions must be sent to one of the following:

**Email or mail to:**

Email: [Laurie.Noble@dot.ca.gov](mailto:Laurie.Noble@dot.ca.gov)

Department of Transportation  
Division of Procurement and Contracts

Attention: Laurie Noble  
1727 30th Street, MS 65  
Sacramento, CA 95816-7006

- C. Written responses to all questions will be collectively compiled and posted, as an Addendum, to the Cal eProcure website (<https://caleprocure.com/pages/index.aspx>). It is the responsibility of the proposer to access the website for any changes or Addenda that may be posted. Refer to this RFP, **Section C) 1, Time Schedule**, for the schedule of events and dates/times. It is the responsibility of the proposer to check Cal eProcure for all addenda. Proposer can contact the Contract Analyst named above.

#### 4. Technical Proposal Requirements

- A. An original proposal marked "ORIGINAL COPY" and one pdf copy on a thumb drive will be required for the Technical Proposal. Each Technical Proposal shall contain at a minimum, all required items listed below. Each requirement's location must be listed in a Technical Proposal, Table of Contents. Also see RFP **Section C) 11, Submission of Proposal**, for submittal details.
- 1) **Section 1. Introduction:** Proposer shall:
    - a. Introduce its team
    - b. Summarize the highlights of the proposal.
  - 2) **Section 2. Project Management:** Proposer shall:
    - a. Designate, by name, the Project Manager to be employed. Project Manager shall be responsible for implementing the Scope of Work, overseeing the activities of the project team, and shall be the single point of contact for this contract. The Project Manager must be available to Caltrans as needed to effectively manage this contract. The selected Contractor shall not cause the substitution of the Project Manager without prior written approval of Caltrans.
    - b. Explain how the various tasks will be managed and coordinated, and how the project manager's technical expertise will support the effective management and coordination of the all activities described in the Scope of Work.
    - c. The Project Manager must be an employee of the Prime Contractor and must have at least five (5) years of related experience in advertising, marketing, public outreach, and community involvement. Proposer shall provide a narrative (one page maximum), quantified to the extent possible, describing the Project Manager's experience in the listed areas.
    - d. Provide an organizational flow chart showing the hierarchy of the proposer's team personnel that will be utilized during the term of the Agreement. The chart must show the relationship between the Project Manager and personnel of the proposer's organization and other parties (including subcontractors) to the proposal.
  - 3) **Section 3. Methodology:** Proposer shall:

The proposer shall describe the overall innovative approach to the work, specific techniques that will be used, and the specific administrative and operational management and expertise that will be employed. The proposal shall include the methodology to implement the included work plan.
  - 4) **Section 4. Work Plan and Work Schedule:** The proposer shall develop a comprehensive work plan detailing how it will successfully plan, launch, carry out, and report results of the campaign. The workplan should demonstrate how the proposer will collect and report quantifiable trash volume reduction/removal to validate the

effectiveness of the campaign. The plan should be complete and concise for evaluators to easily and quickly understand and evaluate.

To prove capability to provide public relations, advertising, outreach and marketing services, the proposer must describe methods, strategies and approaches for completing its proposed work plan. Sufficient detail must be given, which must include examples of past projects demonstrating creativity, competency, and familiarity with litter and highway issues, successes, and challenges.

The proposed work plan and work schedule will be considered provisional and subject to change, as determined by the Caltrans Contract Manager. The objective of the work plan is to give Caltrans an opportunity to study how the proposer would schedule various elements and distribute workload among staff and/or subcontractors and allocate resources.

The following elements shall be incorporated into the Proposer's work plan and schedule.

- **Approach:** To prove its capability to provide public relations focusing on litter prevention, advertising and marketing services, the proposer must describe methods, strategies and approaches for completing its proposed work plan. Detail must be given, which may include examples of successful previous work demonstrating creativity, competency, and familiarity with pollution prevention measures, successes, and challenges.
- **Timeline:** The proposer shall develop a timeline for each phase/task of the campaign. Identify each major task, necessary subtasks and specific milestones by which progress can be measured and payments made. The work plan or schedule shall specify the estimated hours to accomplish each task.
- **Contract oversight:** The proposer shall demonstrate its experience and abilities to implement a statewide public relations, advertising and marketing campaign.
- **Public Relations:** The proposer shall demonstrate its ability, or the ability of its intended subcontractors, to implement a public relations campaign to motivate a broad audience about pollution prevention and impact behavioral changes. The proposer shall demonstrate the ability to ensure that messages are being targeted to both mass and geographically, culturally, ethnically and socio-economically diverse audiences. Notwithstanding the foregoing, a mandatory requirement is that the campaign be motivational and usable across California, and therefore the campaign must not single-out or target groups or sub-groups as the source of pollution. Campaign may include but is not limited to collateral materials, web content, brochures, newsletters, info-graphics, and social media content.
- **Media Relations:** The proposer shall develop a media and public relations plan. In addition, the implement media relations and public affairs programs locally and statewide, as well as the specific public relations tactics that would accompany the media partnership development aspect of the work plan. Engage transportation, consumer, environmental, health, op-ed page editors, editorial boards and other relevant news outlets, including ethnic print and broadcast news media, corporate/organization/governmental agency internal publication newsletters, and web-based and other emerging media.

- **Media Buying:** The proposer shall include recommendations for paid media. Proposer shall demonstrate its ability, or the ability of its intended subcontractor, to select and negotiate rates, secure and place advertising in radio, television, print, digital, outdoor, live traffic and news sponsorships and any other appropriate markets, and to leverage public service time or space. Plan shall include statewide media.
- **Advertising Production/Collateral:** The proposer shall demonstrate its ability, or the ability of its intended subcontractor, to produce and execute a print, digital, and television broadcast advertising program in Spanish and English. The proposer shall include recommendations for creative, cost-effective, appropriate collateral materials that may include, but are not limited to brochures, videos, audios, print pieces, website, bus and train wrapping, and newsletters to support the Clean California campaign. Please be aware that there is a restriction on the use of printed items, colloquially known as “SWAG”, for use by state funded educational campaigns. This could include, but is not limited to, printing campaign logos or messaging on clothing, pencils, pens, promotional items, totes, backpacks, etc. The proposer should be aware of the restriction and not plan for campaign collateral that may violate the restriction.
- **Creative Outreach for K-12 students:** The proposer shall demonstrate its ability, or the ability of its intended subcontractor, to incorporate creative ideas into educational outreach materials for students. The proposer shall include the proposed creative to correlate with student outreach.
- **Creative Outreach General. Spanish and other key non-English speakers:** The proposer shall demonstrate its ability, or the ability of its intended subcontractor, to incorporate creative ideas into the litter abatement messages and educational advertisement materials for the general Spanish, and other key non-English speaking audiences. The proposer shall include the proposed creative to correlate with paid media recommendations.
- **Research:** The proposer shall demonstrate its, or the ability of its intended subcontractor, to conduct pre, during, and post campaign market research, which includes, but is not limited to refinement of campaign target audience; public awareness attitude survey; identify appropriate messaging; test messaging; and the use of Caltrans’ statewide litter data and apply findings in the design and execution of communication strategies.
- **Collateral:** Proposer shall demonstrate its ability, or ability of its intended subcontractors, to translate litter abatement messages into collateral materials including, but not limited to brochures, newsletters, pamphlets, exhibit booths and displays, and other such communicative devices to support Caltrans’ Clean California efforts.
- **Social Media:** The proposer shall demonstrate its ability or the ability of its intended subcontractors to apply the principles and practices of social marketing (e.g., understanding target audiences, designing communications strategies based on their needs, and communicating messages through multiple channels).
- **Volunteer Recruitment:** The proposer shall demonstrate its ability or the ability of its intended subcontractors to recruit young adults and private businesses to participate

in Caltrans' Adopt-a-Highway program and other local litter abatement volunteer groups.

- **Website Development:** The proposer shall demonstrate its ability or the ability of its intended subcontractors to develop website design and content.
- **Partnership Development:** The proposer shall present and show the ability or the ability of its intended subcontractor, to develop partnerships that will result in establishing with local communities, government agencies, businesses, and other entities, with Caltrans support, an ongoing awareness and collaborative outreach efforts aimed at motorists on litter issues. The proposer shall demonstrate how it will build strategic public and private partnerships that will help maximize resources and increase effectiveness of the campaigns. Proposer must outline plans to recruit public and private funding (added value, including in-kind and media) and discuss the potential to partner with other state agencies with common goals. The consultant will coordinate messaging, schedules and strategies with the contractors of the existing Stormwater/Litter campaign, a three-year program that begun in the second quarter of 2021. Clean California offers a historic opportunity to transform our streets and highways that have been blighted with litter and hazardous waste for decades. Significant investment in litter collection, community engagement and education to ultimately transform unsightly roadsides into spaces of pride for all Californians.
- **Social Marketing:** The proposer shall propose a comprehensive marketing campaign to carry out the public awareness campaign, while reaching the most people and gaining the biggest recognition in the most economical way. At a minimum, elements of the campaign shall include:
  - General market outreach (ages 18-49)
  - Targeted Hispanic outreach (non-English speaking)
  - Targeted non-English speaker outreach (excluding Spanish speakers)
  - Targeted young adults (ages 20 – 35) outreach for volunteer outreach/recruitment for Adopt-a-Highway participation
  - Targeted business outreach for corporate volunteer outreach /recruitment for Adopt-a-Highway participation
  - Targeted youth outreach (educational program – K-12)
  - Targeted community/grassroots group engagement
- **Cost Effectiveness:** The proposer shall demonstrate the steps it will take to fully leverage Caltrans' efforts and funds. This may include, but shall not be limited to, the use of partnerships, in-kind services, and pro-bono services by the proposer, its subcontractors and/or existing clients.
- **Commitments:** The proposer shall include commitments received to partner with the campaign and its value. Dollar value shall be represented at a 1:1 ratio where the value is compared to paid advertising costs, or retail value. Example: if added value includes a :30 radio spot, value should be the cost if the :30 spot were sold. Proposer shall include (3) commitment letters as well as (3) letters of intent. The proposer shall include a proposal for public service advertising that potentially feature celebrities and social media influencers. Proposer shall include a letter of commitment from celebrity/influencer/key stakeholders.
- **Clean California Day of Action:** The proposer will demonstrate its approach to assisting with an annual statewide Day of Action in the spring or summer.

- **Outreach Events:** The proposer shall demonstrate how it will participate in a minimum of 24 outreach activities, reaching 500,000 people each year of the contract.

5) **Section 5. Qualifications and Experience:** Proposer shall:

- a. The Proposer's team (prime and/or subcontractors) must have completed a minimum of two (2) advertising campaigns with an average annual gross media budget of not less than one and a half (\$1.5) million dollars. Advertising campaigns are not limited to California or state/government agencies. Proposer shall provide a list of its statewide advertising campaigns with an average annual gross media budget of not less than one and a half (\$1.5) million dollars (minimum two (2) and maximum six (6) projects) with the following information:
  - Firm that provided the services
  - Firm/Agency/Department to which services were provided
  - Project term and dates
  - Total budget of the project
  - Average annual gross media budget
  - Description of services provided (maximum one page)
  - The proposer must present case studies of actual past campaigns or work developed by the proposer and its intended subcontractors and how success was measured.
- b. The proposer shall demonstrate its knowledge and experience in all of the following areas:
  - Developing, managing, marketing, and tracking public relations, advertising and social media campaigns
  - Managing multimillion-dollar statewide advertising campaigns
  - Creative incorporation of ideas
  - Recruiting and establishing public and private partnerships to leverage resources
  - Media buys and/or media buying house
  - Conducting market research
  - Provide information to demonstrate the required minimum qualifications and experience as listed in Section B, Minimum Qualifications of Proposer.
  - Document the project team's qualifications as they apply to performing the tasks described in the Scope of Work. Describe recently completed work as it relates to this Scope of Work.
  - Provide a table or matrix of relevant, previous contracts or projects cross-referenced with the requested services. Indicate the number of years of experience in each area.
- c. Provide information to demonstrate the required minimum qualifications and experience as listed in **Section B), Minimum Qualifications for Proposers.**
- d. Document the project team's qualifications as they apply to performing the tasks described in the Scope of Work. Describe recently completed work as it relates to this Scope of Work.

- e. Provide a table or matrix of relevant, previous contracts or projects cross-referenced with the requested services. Indicate the number of years of experience in each area.
- 6) **Section 6. Personnel:** This section of the Technical Proposal shall identify the proposed team and key personnel. Key personnel shall have experience with, and in-depth knowledge of, techniques and procedures necessary to accomplish the various tasks listed in **Attachment 10, Proposed Form of Agreement, Exhibit A, Scope of Work.**
- a. Identify all key personnel of the prime contractor who will be working under the Agreement and provide brief (two pages maximum) resumes. Include titles, education, academic degrees, professional licenses, qualifications, proposed roles and responsibilities, summaries of similar work performed and expected level of availability for this Agreement.
- b. Introduce the proposed subcontractor organizations, if any, and provide qualifications, roles, and responsibilities for the company/organization as a whole. Provide brief (two pages maximum) resumes for each of the subcontractors' key personnel listed to provide services under the Agreement. Include titles, education, academic degrees, professional licenses, qualifications, proposed roles and responsibilities, summaries of similar work performed and expected level of availability for this Agreement (The cost of the subcontracted work is to be itemized in the Cost Proposal as described below in Cost Proposal Requirements).
- c. Proposer shall provide a table in the format provided on **Attachment 2A** indicating how many hours each key personnel will be assigned for the Agreements and what task(s) each key personnel will perform. All key personnel of prime contractor and subcontractors assigned to the contract and listed in the Proposer's Technical Proposal must be identified by name, title and firm name in the table (**Attachment 2A**). **Hours listed for key personnel on the table should match hours listed for key personnel in the Cost Proposal.**
- d. Caltrans has determined that all of the following job titles/classifications listed below will be required to provide requested services:
- **Senior Manager** (limited work on account, highest level work unavailable through normal account personnel)
  - **Account Manager** (primary contact, in charge of account/project planning, day-to-day operation)
  - **Creative Director** (handles top level creative development, creative production management)
  - **Creative Designer** (handles day-to-day creative work)
  - **Social Media Manager** (primary contact, in charge of social media updates)
  - **Website Manager** (primary contact, in charge of website updates)
  - **Media Director** (limited work on account, highest level work unavailable through normal account personnel)
  - **Media Buyer** (primary media contact, in charge of account/project planning, day-to-day operation)
  - **Support Staff/Intern**
- e. Caltrans recognizes that the job titles/classifications within a proposer's organization may vary from the job titles/classifications listed above. However, the proposer shall use the job titles/classification listed above for the purposes of this RFP. This may

mean that several positions with a proposer's organization with different titles and/or rates may need to be consolidated under one of the above for this RFP. In addition, these job titles/classifications and any rates given will be used for billing by the successful contractor.

- f. The selected contractor shall not substitute the listed key personnel or subcontractors without prior written approval by the Caltrans Contract Manager.
- 7) **Section 7. References:** Proposer shall provide a minimum of three (3) references from clients for whom the proposer has performed similar or related work to that proposed in this request. Each reference must be in the format listed in **Attachment 2B**.
- B. Page Headers and Page Numbering

All pages of the Technical Proposal, including cover pages, Table of Contents, references and resumes, shall have the following header and page numbering format in the upper right-hand corner:

**Technical Proposal**  
Date:  
Agreement: 95A0080  
**Attachment 2**  
Page # of ##

- C. Brochures, thumb drives, drawings, and other promotional documents being submitted with the Technical Proposals shall be clearly identified as to the name of the proposer and the RFP number.

## 5. Cost Proposal Requirements

- A. Cost Proposal, and only the Cost Proposal, shall list all items that will be charged to Caltrans for this Agreement. Cost information of any kind for this Agreement is not allowed in the Technical Proposal. Cost Proposal shall include both prime contractor and all subcontractors cost information. Cost Proposals shall follow the format provided in the sample **Cost Proposal Worksheet, Attachment 1**, and shall be submitted along with Technical Proposal in one (1) sealed envelope. **The resulting Agreement cannot exceed the budgeted allocation of \$32,900,000.00.**
- B. An original proposal marked "ORIGINAL COPY" and one (1) pdf copy on a thumb drive is required for the Cost Proposal. Each Cost Proposal shall contain at a minimum, all required items listed below:
- 1) Cover page in the format listed on page 1 of **Attachment 1, Cost Proposal Worksheet**.
  - 2) Prime Contractor's cost breakdown in the format listed on page 2 of **Attachment 1, Cost Proposal Worksheet**.
  - 3) Each subcontractor's cost breakdown (separately) in the format listed on page 3 of **Attachment 1, Cost Proposal Worksheet**.
- C. Page Headers and Page Numbering

All pages of the Cost Proposal, including cover pages, Table of Contents shall have the following header and page numbering format in the upper right-hand corner:

**Cost Proposal**  
Date  
Agreement No. 95A0080  
**Attachment 1**



Page # of ##

## 6. California Civil Rights Laws

Any person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a State agency with respect to any contract in the amount of one hundred thousand dollars (\$100,000) or more shall certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed, that they satisfy all of the conditions set forth in California Public Contract Code Section 2010 and they shall execute **California Civil Rights Laws Certification** and submit with bid. The California Civil Rights Laws Certification (ADM-0076) must be downloaded

<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0076>.

## 7. Darfur Contracting Act

A. The Darfur Contracting Act, California Public Contract Code Section 10475-10481, applies to any company that currently or within the previous three (3) years has had business activities or other operations outside of the United States. The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with “scrutinized” companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in California Public Contract Code Section 10475. All bidders shall complete the **Darfur Contracting Act Certification** and submit with bid. The Darfur Contracting Act Certification (ADM-0077) must be downloaded at <https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0077>.

B. If your company has not, within the previous three (3) years, had any business activities or other operations outside of the United States, complete Option 1 on the **Darfur Contracting Act Certification**.

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

D. Therefore, Public Contract Code Section 10478(a) requires a company that currently has (or within the previous three (3) years has had) business activities or other operations outside of the United States to certify that it is not a “scrutinized” company when it submits a bid or proposal to a State agency.

E. A scrutinized company may still, however, submit a bid or proposal for a contract with a State agency for goods or services if the company first obtains permission from the Department of General Services (DGS) according to the criteria set forth in Public Contract Code Section 10477(b).

## 8. Iran Contracting Act

A. Pursuant to the Iran Contracting Act of 2010 (Pub. Cont. Code Sections 2200 et seq., hereinafter “the Act”), persons identified on the list established under Public Contract Code Section 2202.5 (hereinafter, “List”) are ineligible to bid on, submit a proposal for, enter into, or renew any contract with the State for goods or services of one million dollars or more.

B. Any person, who submits a bid or proposal, must complete and submit to Caltrans with its bid or proposal, the **Iran Contracting Act Certification**, certifying that it is not on the most current List unless the person is exempted from the certification requirement by PCC Section 2203 (c) or (d). If claiming an exemption, the person shall provide written evidence that supports an exemption under PCC Section 2203(c) or (d) with its bid or proposal. The Iran Contracting Act Certification (ADM-0078) must be downloaded at <https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0078>.

- C. Any person, for a contract that is exempt from bidding or is renewed, or for whom a contract is otherwise awarded by the State, must complete and submit to Caltrans the Iran Contracting Act Certification, certifying that it is not on the most current List, before the contract has been executed by the parties, unless the person is exempted from the certification requirement by Public Contract Code Section 2205(c) or (d). If claiming an exemption, the person shall provide written evidence that supports an exemption under Public Contract Code Section 2203(c) or (d), before execution of the contract.

#### **9. Standard Title VI/Nondiscrimination Assurances (DOT Order No. 1050.2A)**

The California Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC Sections 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### **10. Mandatory Organic Waste Recycling**

The Contractor generating organic waste or commercial solid waste shall arrange for the recycling services required by this section in a manner that is consistent with State and local laws and requirements, including a local ordinance or local jurisdiction's franchise agreement, applicable to the collection, handling, or recycling of organic waste and commercial solid waste. This requirement does not modify, limit, or abrogate the Contractor's right to sell or donate its recyclable organic waste materials consistent with the requirements of Public Resources Code Sections 42649.8 et seq.

#### **11. Submission of Proposal**

- A. Proposals should provide straightforward and concise descriptions of the proposer's ability to satisfy the requirements of this RFP. The proposal must be complete and accurate. Omissions, inaccuracies, or misstatements may be sufficient cause for rejection of a proposal or reduction in points/score during evaluation.
- B. The original proposal must be single sided and marked "ORIGINAL COPY". All documents contained in the original proposal package **must have original signatures** and **must be signed by a person who is authorized to bind the proposing firm**. All additional proposal sets may contain photocopies of the original package.
- C. Caltrans does not accept alternate Agreement language from a prospective contractor. A proposal with such language will be considered a counter proposal and will be rejected. The State's General Terms and Conditions (GTC 04/2017) are not negotiable. The GTC 04/2017 may be viewed at Internet site: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>.
- D. All proposals shall include the documents identified in this RFP's **Required Attachment Checklist, Attachment 5**. Proposals not including the proper "required attachments" may be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements.
- E. Responses to this RFP shall be submitted in one (1) sealed package/envelope containing both the Technical Proposal – Original and one (1) pdf copy on a thumb drive, and Cost Proposal – Original and one (1) pdf copy on a thumb drive.
- F. Proposals must be submitted no later than **2:00 p.m., Feb. 3, 2022**, and addressed as follows (reference **Section C1, Time Schedule**):
- 1) Proposals received after this time and date will be rejected and returned unopened.

- 2) The proposal package/envelope must be plainly marked with the RFP number and title, your firm name, address, and must be marked with "DO NOT OPEN", as shown in the following example:

Agency/Firm Name Address RFP Number 95A0080 RFP Title: Caltrans Clean California Public Education Campaign  <b>DO NOT OPEN</b>
--

- 3) Proposals not submitted under sealed cover and marked as indicated may be rejected. If the proposal is made under a fictitious name or business title, the actual legal name of proposer must be provided.
- G. Proposals must be submitted for the performance of all services described herein. Any deviation from the work specifications will not be considered and will cause a proposal to be rejected.
- H. Proposals (Technical and Cost) must be sealed and labeled (as instructed below). Mail or deliver package to the following location:

**Mail or \*deliver to:**

Department of Transportation  
Division of Procurement and Contracts  
Attention: Laurie Noble  
1727 30th Street, MS 65  
Sacramento, CA 95816-7006

In the upper portion of the sealed mailing envelope, label outer package:

RFP Number 95A0080  
RFP Title: Caltrans Clean California Public Education Campaign  
Firm Name:

**DO NOT OPEN**

\*If your proposal is hand delivered, you must date- and time stamp it immediately upon arrival. The date/time stamp machine is located in the lobby of the first floor to the right of the security guard station at the address noted above. After date/time stamping, proposals should be placed in the locked bid cabinet located below the time stamp. If the proposal package is too large to be electronically stamped, date/time stamp one of the labels provided and attach it to the proposal package. When the proposal package is too large for the locked bid cabinet, ask the security guard to call the Division of Procurement and Contracts (DPAC) reception desk at (916) 227-6000 to have your proposal package picked up by DPAC staff.

- I. A proposal may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. Caltrans may reject a proposal that is not responsive, does not meet the technical standards, or is not from a responsible proposer, or may reject all proposals. Caltrans may also waive any immaterial deviation in a proposal. Caltrans waiver of immaterial defect shall in no way modify the RFP document or excuse the proposer from full compliance with all requirements if the proposer is awarded the Agreement.

- J. Costs for developing proposals and in anticipation of award of the Agreement are entirely the responsibility of the proposer and shall not be charged to the State of California.
- K. Only an individual who is authorized to contractually bind the proposing firm shall sign the **Proposal/Proposer Certification Sheet, Attachment 4**. The signature must indicate the title or position that the individual holds in the firm. The proposer's proposal may be rejected if the Proposal/Proposer Certification Sheet is not signed.
- L. A proposer may modify a proposal after its submission by withdrawing its original proposal and resubmitting a new proposal prior to the proposal submission deadline. Proposal modifications offered in any other manner, oral or written, will not be considered.
- M. A proposer may withdraw its proposal by submitting a written withdrawal request to Caltrans that is signed by the proposer or an authorized agent. A proposer may thereafter submit a new proposal prior to the proposal submission deadline. Proposals may not be withdrawn without cause subsequent to proposal submission deadline.
- N. Caltrans may modify the RFP up to the specified time of the date fixed for submission of proposals by the issuance of an addendum to all parties who received a proposal package. All addenda prior to the submission deadline are also posted on Cal eProcure at <https://caleprocure.com/pages/index.aspx>
- O. Caltrans reserves the right to reject all proposals for reasonable cause.
- P. Proposers are cautioned to not rely on Caltrans during the evaluation to discover and report to the proposer any defects and errors in the submitted documents. Before submitting their documents, proposers should carefully proof them for errors and adherence to the RFP requirements.
- Q. Where applicable, proposer should carefully examine work sites and specifications. Proposer shall investigate conditions, character, and quality of surface or subsurface materials or obstacles that might be encountered. No additions or increases to the agreement amount will be made due to a lack of careful examination of work sites and specifications.
- R. More than one (1) proposal or a proposal that includes various options or alternatives from an individual, firm, partnership, corporation or association under the same or different names, will be rejected. Reasonable grounds for believing that any proposer has submitted more than one proposal for the work contemplated herein will cause the rejection of all proposals submitted by that proposer. If there is reason for believing that collusion exists among the proposers, none of the participants in such collusion will be considered in this or future procurements.

## 12. Evaluation Process

- A. Format Requirements
  - 1) At the time of proposal opening, each proposal will be checked for the presence and/or absence of required information in conformance with the submission requirements of this RFP. Proposals that do not provide requested information may be rejected as non-responsive.
  - 2) Proposals that contain false or misleading statements, or which provide references, which do not support an attribute or condition claimed by the proposer, shall be rejected.
- B. Evaluation of Proposals
  - 1) Caltrans will evaluate each proposal to determine its responsiveness to Caltrans needs. Proposals meeting the Minimum Qualifications will be further assessed by an evaluation

committee. Technical Proposals and Oral Presentations of Proposers that are determined to be responsive will be rated by the evaluation committee using a consensus process. The Consensus scoring will be based on the scoring method listed below:

$$\text{Evaluation Factor/Sub Factor Weight (as stated in the Criteria for Evaluation)} \times \text{Consensus Rating} = \text{Weighted Score}$$

Consensus Rating (Range: 0-4)	Rating Definitions
4	Exceeded All Requirements
3	Partially Exceeded Requirements
2	Met All Requirements
1	Partially Met Requirements
0	Requirements Not Met

Factor/Sub Factor	Example <b>only</b> :	Weight	Consensus Rating	Weighted Score
	Contractor's Approach to Technical Work	2	X 3	= 6

2) Phase 1: Technical Proposal Evaluation

Proposals that are determined to be responsive and meet the proposal submission requirements will be evaluated and scored in accordance with **Criteria for Evaluation of Proposer's Technical Proposal, Attachment 6**.

3) Phase 2: Oral Presentation and Evaluation

Proposers will be contacted to schedule a date and time for the Oral Presentation, which will be conducted virtually between Caltrans and each proposer team via an online, audio-video-conferencing platform such as Cisco WebEx. Caltrans will set up the video conference and provide access information to proposers. Caltrans will contact proposers in advance of the scheduled date and time for the Oral Presentation to arrange a mutually convenient time to test the inter-connection and confirm software compatibility.

Proposer shall email a PDF of their Power Point presentation at least 24 hours prior to oral presentation. Submittal email will be provided to Proposer in their Oral Presentation invitation letter. The PDF will be distributed to the evaluation committee on the day of the Oral Presentation prior to the starting time.

If, for any reason, during the virtual Oral Presentation session, technological problems arise that prevent the delivery and completion of the Oral Presentation in a satisfactory manner, in the opinion of Caltrans, then the Oral Presentation will be re-scheduled and conducted again.

The Oral Presentations will be evaluated and scored in accordance with **Criteria for Evaluation of Proposer's Oral Presentation, Attachment 7**. While the ability of the Contractor to competently work with online video-conferencing platforms is highly relevant to performance under this contract, the evaluations and scoring of the Oral Presentations for the purposes of this RFP will be based on the content of the presentation.

4) Cost Proposal Evaluation

Cost Proposals that meet the proposal submission requirements will be evaluated and scored in accordance with **Criteria for Evaluation of Proposer's Cost Proposal, Attachment 8.**

- 5) The final proposal score will be the combined evaluation scores from the Technical Proposal, Oral Presentation and Cost Proposal. The Agreement will be awarded to the Proposer with the highest combined score who meets the requirements outlined in this RFP, pending approval by Caltrans' Business Enterprise Program, of that proposal's satisfactory compliance of DVBE requirements, and approval of any applicable Preference Programs set forth in this RFP.

C. Miscellaneous Award Issues

- 1) Caltrans does not negotiate rates and/or costs listed on any Cost Proposal submitted for the RFP.
- 2) If no proposals are received containing bids offering a price, which in the opinion of Caltrans is a reasonable price, Caltrans is not required to award an Agreement (PCC Section, 10344 [d]).
- 3) The proposer is advised that should this RFP result in an award of an Agreement, the Agreement will not be in force and no work shall be performed until the Agreement is fully approved by Caltrans and the proposer is notified by the Contract Manager to begin work.
- 4) In the event of a precise tie, lots will be drawn to determine the successful proposer, or if applicable, the tie will be broken in accordance with Government Code 14838 (f).

**13. Pre-Award Audit**

Prior to award of the Agreement, a pre-award audit may be performed. The pre-award audit will be conducted in accordance with generally accepted governmental auditing standards as promulgated by the United States General Accounting Office. The scope of the audit will consist of such tests as the auditors consider necessary to assure that the proposal satisfactorily meets the requirements outlined in Items 1-3 below prior to execution of the Agreement. Upon completion of a pre-award audit, if, in Caltrans judgment, one or more of these requirements is not satisfactorily met, Agreement award may be canceled.

- A. At the time of the pre-award audit, the proposal must demonstrate through actual historical data that its accounting system is capable of accumulating and segregating reasonable, allocable and allowable costs. For new businesses, if actual historical data is unavailable or the accounting system is newly implemented, the system will be tested to determine whether the accounting system is adequate and, if necessary, recommend that an interim audit be performed. At a minimum, the proposal must have an accounting system that meets the following objectives:
- 1) The ability to record and report financial data in accordance with generally accepted accounting principles and the Code of Federal Regulations, Title 48, Federal Acquisition Regulations System, Chapter 1, Part 31.
  - 2) The ability to accumulate and segregate reasonable, allocable, and allowable costs through the use of a cost accounting system.
  - 3) A system of record keeping ensuring that costs billed to Caltrans will be supported by adequate documentation and in compliance with the terms of the Agreement and applicable Federal and State regulations.

- 4) Procedures to retain accounting records and source documentation as required by the terms of the Agreement and applicable Federal and State regulations.
  - 5) A system of internal control, which provides reasonable assurance that assets are protected; financial data, records and statements are reliable; and errors and irregularities are promptly discovered, reported and corrected.
- B. The proposer must be financially capable of performing the work.
- C. The costs proposed must be reasonable.

#### 14. Award and Protest

- A. Notice of Intent to Award shall be posted at Caltrans, 1727 30<sup>th</sup> Street, Sacramento, 95816 (1<sup>st</sup> floor Lobby display case), and on the following Internet site: <http://www.dot.ca.gov/dpac/viewnoticesofintentoaward.html> for five (5) working days prior to awarding the Agreement.
- B. Proposers have the right to protest the award of Caltrans Agreements subject to the following grounds, processes, and procedures.
- 1) If any proposer, prior to the award of Agreement, files a protest with Caltrans, Protest Unit and the DGS, Office of Legal Services, on the grounds that the (protesting) proposer would have been awarded the Agreement had the Agency correctly applied the evaluation standard in the RFP, or if the Agency followed the evaluation and scoring methods in the RFP, the Agreement shall not be awarded until either the protest has been withdrawn or the State has decided the matter. It is suggested that you submit any protest by certified or registered mail to:

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<b>Department of Transportation</b>	<b>Department of General Services</b>
Division of Procurement and Contracts Attention: Bid, Protest, and Disputes Manager 1727 30th Street, MS 65 Sacramento, CA 95816 Phone Number: (916) 639-6340 Email: <a href="mailto:DPAC.Protest.Disputes.Terminations@dot.ca.gov">DPAC.Protest.Disputes.Terminations@dot.ca.gov</a>	Office of Legal Services Attention: Bid Protest Coordinator 707 Third Street, 7th Floor, Suite 7-330 West Sacramento, CA 95605 Phone Number: (916) 376-5098 Email: <a href="mailto:OLSProtests@dgs.ca.gov">OLSProtests@dgs.ca.gov</a>

- 2) Within five (5) days after filing the initial protest, the protesting proposer shall file with Caltrans, Protest Unit, a full and complete written statement specifying the grounds for the protest. It is suggested that you submit this complete written statement by certified or registered mail.
- C. Upon award of the Agreement, proposer must complete and submit to Caltrans the Payee Data Record (STD 204), to determine if the proposer is subject to State income tax withholding pursuant to California Revenue and Taxation Code Sections 18662. This form can be found on the Internet at <https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf>. No payment shall be made unless a completed STD 204 has been returned to Caltrans.

#### 15. Disposition of Proposals

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

copyright for any proprietary material submitted.

#### **16. Standard Conditions of Service**

- A. Service shall be available no sooner than the express date set by Caltrans and the proposer, after all approvals have been obtained and the Agreement is fully executed. Should the proposer fail to commence work at the agreed upon time, Caltrans, upon five (5) days written notice to the Contractor, reserves the right to terminate the Agreement. In addition, the proposer shall be liable to the State for the difference between proposer's proposal price and the actual cost of performing work by the second lowest proposer or by another Contractor.
- B. All performance under the Agreement shall be completed on or before the termination date of the Agreement.
- C. Antitrust Provisions
  - 1) In submitting a bid to a public purchasing body, the proposer offers and agrees that if the proposal is accepted, it will assign to the purchasing body 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. Sec. 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, materials, or services by the proposer for sale to the purchasing body pursuant to the proposal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the proposer (See Government Code Section 4552).
  - 2) If the awarding body or public purchasing body 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 public body any portion of the recovery, including treble damages, attributable to overcharges that were paid.
  - 3) 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 (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action (See Government Code Section 4554).
- D. Loss Leader usage is prohibited in this solicitation: It is unlawful for any person engaged in business within this State to sell or use any article or product as a "loss leader" as defined in California Business and Professions Code Section 17030. "Loss Leader" means any article or product sold at less than cost: a) where the purpose is to induce, promote or encourage the purchase of other merchandise; or b) where the effect is a tendency or capacity to mislead or deceive purchasers of prospective purchasers; or c) where the effect is to divert trade from or otherwise injure competitors.
- E. No oral understanding or agreement shall be binding on either party.
- F. If the proposer is awarded the Agreement and refuses to sign the Agreement presented for signature within the time and manner required, the proposer will be liable to Caltrans for actual damages resulting to Caltrans therefrom or ten percent (10%) of the amount proposed, whichever is less.

#### **D) Special Program(s)**

The following Special Program(s) are applicable to this RFP.



**1. Disabled Veteran Business Enterprise (DVBE) Participation Requirements**

**A. DVBE Participation Program with Goals**

- 1) The required DVBE participation goal for this RFP is **five percent (5%)**. The resultant contract is financed with State funds and subject to PCC, Section 10115 et seq., Military and Veterans Code, Section 999 et seq., and Title 2, California Code of Regulations (2 CCR), Section 1896.60 et seq., that provides contracting opportunities for qualified DVBEs certified by the DGS. The DVBE Incentive Program may also apply – see paragraph B, DVBE Incentive Program, below.
- 2) Proposer shall complete and submit the **Proposal/Proposer Certification Sheet (Attachment 4), Bidder Declaration, GSPD-05-105 (Attachment 3)**, and as applicable, the **Disabled Veteran Business Enterprise Declarations, DGS PD 843**. Proposer shall complete or collect DGS PD 843(s) when the following situations occur:
  - a. Proposer is DVBE (prime) contractor.
  - b. Proposer subcontracts with any DVBE firm. Proposer collects and submits with its proposal package a completed and signed DGS PD 843 from each of the DVBE subcontractor(s) listed on the GSPD-05-105.

For each certified DVBE Subcontractor listed on the Bidder Declaration, GSPD-05-105, the Proposer shall submit a copy of the quotes from each DVBE (on the DVBE’s company letterhead) as **Attachment 2C**, titled “Quotes from DVBE Subcontractors.” as proof of commitment. Failure to provide required DVBE information will result in the bid being rejected as non-responsive.

- 3) Additional references: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program>

**B. DVBE Incentive Program**

- 1) The DVBE Incentive Program applies to this solicitation. It is separate from the DVBE Participation Program and was established in Military and Veterans Code, Section 999 et seq., and 2 CCR Section 1896.99 et seq., to encourage proposers to partner with DVBE subcontractors. The incentive is used only for evaluation purposes to arrive at the successful bidder and does not alter the amounts of the actual bid. Any responsive and responsible proposer with the confirmed DVBE participation per the Tables in paragraph 3) below is eligible to receive the incentive. Proposers who are not responsive and responsible regardless of the amount of DVBE participation are not eligible to receive the incentive.
- 2) Caltrans will apply an incentive to proposals proposing the utilization of DGS Certified DVBE firms identified on the Bidder Declaration, GSPD-05-105. Information provided on the Bidder Declaration, GSPD-05-105 shall be verified by Caltrans prior to the award of the contract. The incentive points are equal to a percentage of the total possible points based on the amount of DVBE participation in the proposal being evaluated per the Tables below.
- 3) Tables for RFP

**Required 5% Goal**

Verified DVBE Participation	DVBE Incentive Amount
7% or more	5%

6.5% - 6.99%	4%
6.0% - 6.49%	3%
5.5% - 5.99%	2%
5.01% - 5.49%	1%

- 4) When applying the DVBE incentive a Non-SB shall not displace an award to a California Certified Small Business. Nor shall the DVBE incentive exceed five percent (5%) of the total possible available points.
- 5) Additional information: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program>

## 2. Small Business Enterprise or Microbusiness Preference

- A. Government Code Section 14835 et seq. requires that a five percent (5%) preference be given to proposal's who qualify as a Certified SB or MB. The rules and regulations of this law, including the definition of a small business for the delivery of services, are contained in 2 CCR 1896 et seq.
- B. To claim the SB or MB preference, your firm must have its principal place of business located in California and be certified by the DGS, Office of Small Business and Disabled Veteran Business Services (OSDS). If proposer is claiming the five percent (5%) certified SB or MB preference, complete the **Proposal/Proposer Certification Sheet, Section 16, Attachment 4**, and attach a copy of your certification.
- C. Pursuant to Government Code Section 14838 and 2 CCR 1896, if a proposer is not a certified SB but wishes to be eligible for the five percent (5%) "non-SB" preference, the proposer must subcontract at least twenty five percent (25%) of its net proposed price to one or more certified small businesses. If proposer is claiming the five percent (5%) "non-SB" preference, complete the **Proposal/Proposer Certification Sheet, Section 17, Attachment 4**, and complete **Bidder Declaration form, GSPD-05-105, Attachment 3**, with the names of all certified SB firms being claimed for credit. Attach a copy of the subcontractor's Certified SB certificate for each SB subcontractor and a copy of all SB subcontractor quotes to the **Bidder Declaration form, GSPD-05-105, Attachment 3**.
- D. Certified SB and MB bidder(s) shall have precedence over "Non-SB" proposers in the application of SB preference(s).
- E. SB Preferences may not be applied to any proposal deemed non-responsive with the solicitation instructions or from a responsible proposer.
- F. Questions regarding the certification approval process or SB program should be directed to DGS, OSDS at (800) 559-5529. For the 24-hour recording call (916) 375-4940, or submit E-mail requests to: OSDSHelp@dgs.ca.gov  
Additional References: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Office-of-Small-Business-and-Disabled-Veteran-Business-Enterprise/Certification-Program>

- G. SB or MB proposers or proposers using the "Non-Small Business" preference shall be granted a preference consisting of five percent (5%) of the highest responsible proposer's total score if the highest scored proposal is from a non-certified SB or MB.

**Attachment 1**  
**Sample Cost Proposal Worksheet**

Cover Page

**TABLE 1** Total Costs\* Per Task

Labor Costs	____%	\$
Media Costs (including Media Buy mark-up)	____%	\$
Direct Costs	____%	\$
Indirect Costs	____%	\$
<b>*Grand Total for this Agreement</b>	<b>100%</b>	<b>\$</b>

**Notes:**

\*Total Costs for Tasks Table 1 shall include Prime Contractor and all Subcontractors costs.

**TABLE 2** Total Costs for Prime and Each Subcontractor

Prime Contractor (firm name) Total Costs (for this Agreement)	____%	\$
Subcontractor 1 (firm name) Total Costs (for this Agreement)	____%	\$
Subcontractor 2 (firm name) Total Costs (for this Agreement)	____%	\$
Subcontractor 3 (firm name) Total Costs (for this Agreement)	____%	\$
<b>Grand Total** for this Agreement</b>	<b>100%</b>	<b>\$</b>

**Notes:**

Add/subtract subcontractor rows as applicable in Table 2 above.

\*\*Grand Total in Table 1 and Table 2 should match.

**Attachment 1**  
**SAMPLE COST PROPOSAL WORKSHEET**

Prime Contractor: (Firm Name)

<b>Direct Labor Cost</b>			
Personnel (name and title)	Hours	Rate* (per hour)	Total (Hours X Rate)
Staff Name – Senior. Manager	____ hrs. @	\$____	\$____
Staff Name – Account Manager	____ hrs. @	\$____	\$____
Staff Name –Creative Director	____ hrs. @	\$____	\$____
Staff Name –Creative Designer	____ hrs. @	\$____	\$____
Staff Name – Social Media/Web Content Manager	____ hrs. @	\$____	\$____
Staff Name – Media Director	____ hrs. @	\$____	\$____
Staff Name – Media Buyer	____ hrs. @	\$____	\$____
Staff Name – Support Staff/Intern	____ hrs. @	\$____	\$____
<b>Sub Total – Labor Cost</b>	<b>____ hrs.</b>	<b>N/A</b>	<b>\$____</b>

<b>Media Cost (except labor)</b>	
Net Media Buy	\$____
Media Buy Mark-Up	\$____
<b>Sub Total – Media Cost</b>	<b>\$____</b>

<b>Other Direct Costs (except labor)</b>	
Research	\$____
Supplies	\$____
Travel**	\$____
Other Direct Costs (itemize)	\$____
<b>Sub Total – Other Direct Costs (except labor)</b>	<b>\$____</b>

<b>PRIME CONTRACTOR (firm name) Total Cost for Task 1</b>	<b>\$____</b>
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**Notes:**

\*Labor Rates shall include indirect costs (such as overhead, fringe, and any other items), fee/profit and any other applicable costs to be charged to Caltrans for this agreement. Rate should be rounded to the second decimal point prior to calculating the Total.

\*\*Travel, Transportation and subsistence costs shall not exceed rates authorized to be paid to non-represented state employees under current CalHR rules.

Add/Delete rows to tables above as applicable.

Attach additional Cost Proposal Worksheets in this format as needed.

**Attachment 1**  
**SAMPLE COST PROPOSAL WORKSHEET**

Subcontractor: (Firm Name)

<b>Direct Labor Cost</b>			
Personnel (name and title)	Hours	Rate* (per hour)	Total (Hours X Rate)
Staff Name –Creative Director	____ hrs. @	\$____	\$____
Staff Name –Creative Designer	____ hrs. @	\$____	\$____
Staff Name – Media Buyer	____ hrs. @	\$____	\$____
Staff Name – Title	____ hrs. @	\$____	\$____
Staff Name – Title	____ hrs. @	\$____	\$____
Staff Name – Support Staff/Intern	____ hrs. @	\$____	\$____
<b>Sub Total – Labor Cost</b>	<b>____ hrs.</b>	<b>N/A</b>	<b>\$____</b>

<b>Media Cost (except labor)</b>	
Net Media Buy	\$____
Media Buy Mark-Up	\$____
<b>Sub Total – Media Cost</b>	<b>\$____</b>

<b>Other Direct Costs (except labor)</b>	
Research	\$____
Supplies	\$____
Travel**	\$____
Other Direct Costs (itemize)	\$____
<b>Sub Total – Other Direct Costs (except labor)</b>	<b>\$____</b>

<b>SUBCONTRACTOR (firm name) Total Cost for Task 1</b>	<b>\$____</b>
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**Notes:**

\*Labor Rates shall include indirect costs (such as overhead, fringe, and any other items), fee/profit and any other applicable costs to be charged to Caltrans for this agreement. Rate should be rounded to the second decimal point prior to calculating the Total.

\*\*Travel, Transportation and subsistence costs shall not exceed rates authorized to be paid to non-represented state employees under current CalHR rules.

Add/Delete rows to tables above as applicable.

Attach additional Cost Proposal Worksheets in this format, as applicable, for each additional subcontractor.

### Attachment 2A

Key Personnel Hours Table must be submitted with Technical Proposal (Refer to RFP **Section C) 4, Technical Proposal Requirements, item A. 6), Personnel**).

1. Personnel: All Key Personnel of prime contractor and all subcontractors assigned to the contract and listed in the Proposer's Technical Proposal must be identified by **name, title and firm name** in the table below.
2. Proposer shall provide hours **assigned to key personnel (including key personnel of subcontractors) in format provided in the table below. Hours listed for key personnel on the table should match hours listed for key personnel in the Cost Proposal.** Providing other units of measure does not satisfy this requirement. Failure to provide hours assigned to key personnel (including key personnel of subcontractors) per task may be sufficient cause for rejection of proposal.
3. Proposer may add/delete rows and columns as needed to the table below.

**SAMPLE KEY PERSONNEL HOURS TABLE**

<b>Key Personnel</b>	<b>Assigned Tasks</b>	<b>Assigned Hours</b>
Personnel Name, Title, Firm Name		
Personnel Name, Title, Firm Name		
Personnel Name, Title, Firm Name		
Personnel Name, Title, Firm Name		
<b>Total Key Personnel Hours</b>		

**Attachment 2B**

**Sample Reference Form**

**Each reference shall include the following information:**

Name of firm/organization (Prime Contractor) that provided services:

Client firm/organization name and address:

Contact Name:

Title:

Email Address:

Phone Number:

Street Address:

Brief Description of the project, including services and deliverables:

Agreement term (dates):

Agreement Value/Cost:

Highlights relevant and applicable to this RFP:

## Attachment 2C

### Quotes from SB or DVBE Subcontractors

Bidder shall attach copies of **SB or DVBE Subcontractors** quotes (on SB or DVBE's letterhead) from any SB or DVBE subcontractors listed on the form GSPD-05-105. Refer to instructions in RFP Section D), Items 1A2 and 2C).



**ATTACHMENT 3**

**BIDDER DECLARATION**

1. Prime bidder information (**Review attached Bidder Declaration Instructions prior to completion of this form**):
  - a. Identify current California certification(s) (MB, SB, NVSA, DVBE):  or None  (If "None", go to Item #2)
  - b. Will subcontractors be used for this contract? **Yes**  **No**  (If yes, indicate the distinct element of work your firm will perform in this contract (e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.

---

  - c. If you are a California certified DVBE:
    - (1) Are you a broker or agent? **Yes**  **No**
    - (2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? **Yes**  **No**  **N/A**

2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. Attach additional pages, if necessary):

Subcontractor Name, Contact Person, Phone Number, and Fax Number	Subcontractor Address and Email Address	CA Certification (MB, SB, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?

**CERTIFICATION:** By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.

## ATTACHMENT 3

### BIDDER DECLARATION Instructions

All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.

1.a. Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:

- Microbusiness (MB)
- Small Business (SB)
- Small Business Nonprofit Veteran Service Agency (SB/NVSA)
- Disabled Veteran Business Enterprise (DVBE)

1.b. Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No", proceed to Item #1.c. If "Yes", enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, SB/NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999(e)(2)(A) for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses. For questions regarding commercially useful function determinations made in conjunction with certification approval, contact the Department of General Services, Procurement Division, Office of Small Business and DVBE Certification (OSDC), OSDC Certification and Compliance Unit via email at: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

**Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.**

1.c. This item is only to be completed by businesses certified by California as a DVBE.

(1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No". The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

(2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If not bidding rental equipment, mark "N/A" for "not applicable."

2. If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page \_\_\_ of \_\_\_" on the form.

If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page \_\_\_ of \_\_\_" accordingly

2. (continued) Column Labels

**Subcontractor Name, Contact Person, Phone Number, and Fax Number**—List each element for all subcontractors.

**Subcontractor Address and Email Address**—Enter the address and, if available, an email address.

**CA Certification (MB, SB, NVSA, DVBE, or Non)**—If the subcontractor possesses a current State of California certification(s), verify on this website ([www.eprocure.pd.dgs.ca.gov](http://www.eprocure.pd.dgs.ca.gov)).

**Work performed or goods provided for this contract**—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

**Corresponding % of bid price**—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

**Good Standing?**—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, and/or DVBE status
- Is not listed on the OSDC website as ineligible to transact business with the State

**51% Rental?**—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Enter "N/A" if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "Yes" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "No" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

Read the certification at the bottom of the page and complete the "Page \_\_\_ of \_\_\_" accordingly.

**Attachment 4**

**Proposal/Proposer Certification Sheet**

Only an individual who is authorized to bind the proposing firm contractually shall sign the Proposal/Proposer Certification Sheet. The signature must indicate the title or position that the individual holds in the firm. This Proposal/Proposer Certification Sheet must be signed and returned along with all "required attachments" as an entire package with original signatures. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions.

- A. Our all-inclusive proposal is submitted in a sealed envelope marked **"Cost Proposal - Do Not Open"**.
- B. All required attachments are included with this certification sheet.
- C. I have read and understand the DVBE participation requirements and have included documentation demonstrating that I have met the participation goals.
- D. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.
- E. The signature and date affixed hereon certifies that this proposal is a firm offer for a 90-day period.

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

1. Company Name	2. Telephone Number ( )	2a. Fax Number ( )
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)	8. California Corporation No. _____	
Indicate applicable license and/or certification information:		
9. Contractor's State Licensing Board Number	10. PUC License Number CAL-T-	11. Required
12. Proposer's Name (Print)	13. Title	
14. <b>Signature</b>	15. Date	
16. Are you certified with the Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) as:		
a. Small Business Enterprise      Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number:	b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below:	
<b>NOTE:</b> A copy of your Certification is required to be included if either of the above items is checked <b>"Yes"</b> .		
Date application was submitted to OSDS, if an application is pending: _____		
17. Are you a Non-Small Business committing to the use of 25% Certified Small Business Subcontractor Participation? Yes <input type="checkbox"/> No <input type="checkbox"/>		
If Yes, complete and return the Bidder Declaration form, GSPD-05-105 with your proposal.		

**Attachment 4**

**Completion Instructions for PROPOSAL/PROPOSER CERTIFICATION SHEET**

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

Item Numbers	Instructions
1, 2, 2a, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
6	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete if your firm holds a California contractor's license. This information will be used to verify possession of a contractor's license for public works agreements.
10	Complete if your firm holds a PUC license. This information will be used to verify possession of a PUC license for public works agreements.
11	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
12, 13, 14, 15	Must be completed. These items are self-explanatory.
16	If certified as a Small Business Enterprise, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veterans Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to OSBCR.
17	Check the applicable box. Complete and return GSPD-05-105 with your proposal.

## Attachment 5

### Required Attachment Checklist

A complete proposal package will consist of the items identified below. Complete this checklist to confirm the items in your proposal. Place a check mark or "X" next to each item that you are submitting to the State. All attachments identified below are applicable to this RFP and must be returned, as instructed, or your proposal may be considered non-responsive. Return this checklist with your Technical Proposal package.

**Note:** Return this Checklist with the Technical and Cost Proposal package.

### Technical Proposal and Attachments:

Attachments	Attachment Name/Description
_____	<b>Technical Proposal</b> as stated in this RFP (This shall be incorporated into the contract as <b>Attachment 2</b> )
_____	Contractor Certification Clauses (CCC 04/2017) The CCC 04/2017 must be downloaded on the Internet at <a href="https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language">https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language</a> . Page one must be signed and submitted prior to the award of the Agreement.
_____	California Civil Rights Laws Certification. The California Civil Rights Laws Certification (ADM-0076) must be downloaded at <a href="https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0076">https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0076</a> .
_____	Darfur Contracting Act Certification. The Darfur Contract Act Certification (ADM-0077) must be downloaded at <a href="https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0077">https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0077</a> .
_____	Iran Contracting Act Certification. The Iran Contracting Act Certification (ADM-0078) must be downloaded at <a href="https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0078">https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=ADM0078</a> .
_____	Required Attachment Checklist ( <b>RFP Attachment 5</b> )

## Attachment 5

### Cost Proposal and Attachments:

<b>Attachments</b>	<b>Attachment Name/Description</b>
_____	Cost Proposal as stated in this RFP ( <b>RFP Attachment 1</b> )
_____	Bidder Declaration, GSPD-05-105 ( <b>RFP Attachment 3</b> )
_____	Disabled Veteran Business Enterprise Declarations, DGS PD 843, must be downloaded at <a href="https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd_843.pdf">https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd_843.pdf</a>
_____	Quotes from SB/DVBE Subcontractors ( <b>RFP Attachment 2C</b> )
_____	Proposal/Proposer Certification Sheet ( <b>RFP Attachment 4</b> )
_____	Required Attachment Checklist ( <b>RFP Attachment 5</b> )

**Attachment 6**

**Criteria for Evaluation of Technical Proposal**

<b>Technical Proposal Evaluation: (Contractor Name)</b>	<b>Weight</b>	<b>Consensus Rating (0-4)</b>	<b>Weighted Score</b>	<b>Comments</b>
<b>Section 1. Introduction (4)</b>				
Introduction of team and summary of highlights in the proposal	1			
<b>Section 2. Project Management (4)</b>				
Ability to effectively coordinate and manage activities and tasks described in the scope of work	1			
<b>Section 3: Methodology (8)</b>				
Overall approach, specific techniques, administrative, operational management and expertise, methods to implement work plan	2			
<b>Section 4: Work Plan and Work Schedule (150)</b>				
A. Quality of detailed work plan and schedule for task completion based on Scope of Work	5			
B. Contract Oversight	1			
C. Demonstrates the ability to implement Public Relations programs	3.75			
D. Quality of Media Purchase Plan	4			
E. Demonstrates Cost Effectiveness through Commitment Letter and Letters of Intent	4.75			
F. Creative media and outreach	4			
G. Partnership Development	2			
H. Advertising Production/Collateral	2.75			
I. Market Research	2.50			
J. Public Education and outreach	2.50			
K. General Marketing Outreach (18-49)	2.50			
L. Effectiveness Methodology	2.75			



**Attachment 6**

<b>Technical Proposal Evaluation: (Contractor Name)</b>	<b>Weight</b>	<b>Consensus Rating (0-4)</b>	<b>Weighted Score</b>	<b>Comments</b>
<b>Section 5. Qualifications and Experience (85)</b>				
A. Experience to develop, manage, market, and track public relations and advertising campaigns	3.75			
B. Ability to manage multi-million-dollar statewide advertising campaigns	3.75			
C. Creative incorporation of ideas	3			
D. Experience to develop, recruit and establish public and private partnerships to leverage resources	2			
E. Ability to select, negotiate, secure, and place advertisements in various markets	3.75			
F. Media buys and/or media buying house	2.5			
G. Conducting market research	2.5			
<b>Section 6. Personnel (11)</b>				
Staff qualifications, experience, and allocation	2.75			
<b>Section 7. References (8)</b>				
Relevant references with requested information	2			
<b>Overall Quality of Technical Proposal (10)</b>				
Responsiveness to RFP; completeness, clarity, format, organization, and general quality of proposal	2.5			

<b>Total Possible Points</b>	<b>280</b>
<b>Proposer's Points:</b>	



**Attachment 7**

**Criteria for Evaluation of Consultant Oral Presentations**

<b>Oral Presentation Evaluation: (Contractor Name)</b>	<b>Weight</b>	<b>Consensus Rating (0-4)</b>	<b>Weighted Score</b>	<b>Comments</b>
A. Demonstrated an understanding of the project Scope of Work	3.75			
B. Demonstrated experience, knowledge and abilities to develop and effectively manage a multi-million-dollar media advertising campaign	2.5			
C. Demonstrated past experiences and current abilities to select, negotiate, secure, and place advertisements in various markets	2.5			
D. Demonstrated past and current experiences and abilities to form various partnerships, cooperatives, etc. to successfully leverage resources	3.75			
E. Provided a creative, organized, clear, concise oral presentation consistent with the Technical Proposal	3.75			

<b>Total Possible Points:</b>	<b>65</b>
<b>Proposer's Points:</b>	

**Attachment 8**

**Criteria for Evaluation of Consultant Cost Proposal**

<b>Cost Proposal Evaluation</b>	<b>Maximum Possible Points</b>	<b>Proposer's Points</b>
<b>Labor Cost</b>		
A. Labor Hourly Rate	40	
B. Labor Cost as a percentage of the total budget	25	
<b>Media Cost</b>		
C. Net Media Score	40	
D. Media Buy Mark-up Score	20	
<b>Direct Cost (except Labor)</b>		
E. Direct cost (except Labor) as a percentage of the total budget score	15	
F. Indirect Cost as a percentage of the total budget score	10	
<b>Total Possible Points:</b>	<b>150</b>	
<b>Proposer's Points:</b>		

**Notes:**

- Cost Score Calculation Formulas and Sample Calculations for sections A through E above are provided on the following pages - 2 through 6, of this Attachment.
- All calculations will be rounded to the nearest second (2<sup>nd</sup>) decimal place

### Attachment 8

A. For **Labor Hourly Rate Score** - Labor Hourly Rate will be calculated as:

Total Labor Cost for the agreement (including Labor Cost of all Prime's and all Subcontractors' personnel) divided by Total number of personnel hours assigned to the agreement (including hours of all Prime's and all Subcontractors' personnel)

**Example 1:** Bidder A (including all personnel of Prime & all Subcontractors) proposed following labor hours and cost:

<u>Bidder A</u>	Labor Hours Assigned for this agreement (all classifications combined)	Labor Cost (all classifications combined)
Prime Contractor	5200	\$700,000.00
Subcontractor 1	1500	\$150,000.00
Subcontractor 2	500	\$50,000.00
<b>Total:</b>	<b>7200 hours</b>	<b>\$900,000.00</b>

Bidder A: **Labor Hourly Rate** = \$900,000.00 ÷ 7200 hrs. = **\$125.00/hr.**

**Labor Hourly Rate Score** Calculation (after determining the hourly rates based on the above criteria):

Lowest hourly rate will be awarded the maximum points. All other hourly rates will be awarded points based on the calculation: Lowest Hourly Rate divided by Other Proposer's Hourly Rate and then multiplied by maximum points:

**Example 2:**

Bidder A: proposed Labor Hourly Rate is \$125/hr.

Bidder B: proposed Labor Hourly Rate is \$150/hr.

Bidder C: proposed Labor Hourly Rate is \$200/hr.

Maximum Possible Points for Labor Hourly Rate: **40**

Bidder A with Labor Hourly Rate of \$125/hr. (lowest) will be awarded **40 points**.

Bidder B: [(\$125 (lowest rate) ÷ (\$150 (rate for Bidder B))] × 40 (maximum points) = [0.83] × 40 = 33.20 Bidder B with \$150/hr. Labor Hourly Rate will be awarded **33.20 points**.

Bidder C: [(\$125 (lowest rate) ÷ (\$200 (rate for Bidder C))] × 40 (maximum points) = [0.63] × 40 = 25.20. Bidder C with \$200 Labor Hourly Rate will be awarded **25.20 points**.

### Attachment 8

B. **Labor Cost as a percentage of the total budget (PTB) Points** - Labor cost as a PTB will be calculated as:

Total Labor Cost for the agreement (including Labor Cost of all Prime's and all Subcontractors' personnel) divided by Grand Total Cost of the agreement X 100

**Example 3:** Bidder A (including Prime & all Subcontractors) proposed the **Grand Total Cost** for the contract as **\$9,000,000.00** and the following Labor Cost:

Bidder A	Labor Cost (all personnel combined)
Prime Contractor	\$700,000.00
Subcontractor 1	\$150,000.00
Subcontractor 2	\$50,000.00
<b>Total:</b>	<b>\$900,000.00</b>

Bidder A: Labor Cost as a PTB = \$900,000 ÷ \$9,000,000 X 100 = **10.00%**

**Labor Cost as a Percentage of Total Budget Points** Calculation (after determining the percentage based on the above criteria):

Lowest Percentage will be awarded the maximum points. All other Proposers' Percentages will be awarded points based on the calculation: Lowest Percentage divided by Other proposer's Percentage and then multiplied by maximum points:

Bidder A: proposed Labor Cost as PTB is 10%

Bidder B: proposed Labor Cost as PTB is 30%

Bidder C: proposed Labor Cost as PTB is 20%

Maximum Possible Points for Labor Cost as a percentage of the total budget: **25**

Bidder A with Labor Cost as PTB of 10% (lowest) will be awarded **25 points**.

Bidder B: [10 (lowest PTB) ÷ 30 (PTB for Bidder B)] × 25 (maximum points) = [0.33] × 25 = 8.25 Bidder B with Labor Cost as PTB of 30% will be awarded **8.25 points**.

Bidder C: [10 (lowest PTB) ÷ 20 (PTB for Bidder C)] × 25 (maximum points) = [0.50] × 25 = 12.50 Bidder C with Labor Cost as PTB of 20% will be awarded **12.50 points**.

**Attachment 8**

C. **Net Media Buy Points** - Net media Buy Cost will be calculated as:

Net Media Buy Cost of Prime + Net Media Buy Cost of all Subcontractors

**Example 5:** Bidder A (including Prime and all Subcontractors) proposed the following Net Media Buy Cost:

Bidder A	Net Media Buy Cost (before Mark-up)
Prime Contractor	\$5,000,000.00
Subcontractor 1	\$1,500,000.00
Subcontractor 2	\$500,000.00

Bidder A: Net Media Buy Cost = \$5,000,000 + \$1,500,000 + \$500,000 = **\$7,000,000.00**

**Note:** Net Media Buy Cost strictly means the total (\$ amount) cost of Media Buy (of Prime and all Subcontractors) proposed on the Cost Proposal and, does not include Mark-up cost on Media Buys of the Prime and Subcontractors or added value for Media gained from partnerships, in-kind services, pro-bono services, and other such partnerships/resources.

**Net Media Buy Cost Points** Calculation (after determining the cost based on above criteria):

Highest Cost will be awarded the maximum points. All other Proposers' costs will be awarded points based on the calculation: Other Proposer's Cost divided by Highest Cost and then multiplied by maximum points:

Bidder A: proposed Net Media Buy cost is \$7,000,000.00

Bidder B: proposed Net Media Buy cost is \$6,000,000.00

Bidder C: proposed Net Media Buy cost is \$5,000,000.00

Maximum Possible Points for Net Media Buy: **40**

Bidder A with \$7,000,000 Net Media Buy cost (highest) will be awarded **40 points**.

Bidder B: [6,000,000 (cost for Bidder B)] ÷ 7,000,000 (highest cost) × 40 (maximum points) = [0.86] × 40 = 34.40 Bidder B with \$6,000,000 Net Media Buy cost will be awarded **34.40 points**.

Bidder C: [5,000,000 (cost for Bidder B)] ÷ 7,000,000 (highest cost) × 40 (maximum points) = [0.71] × 40 = 28.40 Bidder C with \$5,000,000 Net Media Buy cost will be awarded **28.40 points**.

**Attachment 8**

D. **Media Buy Mark-up Percentage Points** - Media Buy Mark-up percentage will be calculated as:

$$\frac{\text{Total Cost (\$ amount) of Media Buy Mark-up (including Prime and all Subcontractors)}}{\text{Total Cost (\$ amount) of Net Media Buy (including Prime and all Subcontractors)}} \times 100$$

**Example 7:** Bidder A (including Prime & all Subs) proposed the following costs and mark-ups for Media Buy:

Bidder A	Net Media Buy Cost	Mark-up %	Mark-up Cost
Prime Contractor	\$5,000,000.00	9%	\$450,000.00
Subcontractor 1	\$1,500,000.00	6%	\$90,000.00
Subcontractor 2	\$500,000.00	4%	\$20,000.00
<b>Total:</b>	<b>\$7,000,000.00</b>	<b>N/A</b>	<b>\$560,000.00</b>

Bidder A: **Media Buy Mark-up percentage** =  $\$560,000 \div \$7,000,000 \times 100 = \mathbf{8.00\%}$

**Media Buy Mark-Up Percentage Points** Calculation (after determining the percentages based on the criteria above):  
Points will be awarded based on the table below:

Media Buy Mark-up Percentage	Points Awarded
0%	20 points
0.1% - 2.00%	17 points
2.01% - 3.00%	14 points
3.01% - 4.00%	11 points
4.01% - 5.00%	8 points
5.01% - 6.00%	5 points
6.01% - 7.00%	2 points
7.01% and above	0 points

**Attachment 8**

E. **Direct Cost as a percentage of the total budget (PTB) Points** - Direct Cost (Except Labor) as a PTB will be calculated as:

$$\frac{\text{Total Direct Cost (except Labor) (including Prime's and all Subcontractors' costs)}}{\text{Total Cost for the agreement}} \text{ Grand Total Cost} \times 100$$

**Example 8:** Bidder A (including Prime and all Subcontractors) proposed the **Grand Total Cost** for the contract as **\$9,000,000.00** and the following Direct Cost (Except labor):

Bidder A	Direct Cost (Except Labor)
Prime Contractor	\$750,000.00
Subcontractor 1	\$100,000.00
Subcontractor 2	\$50,000.00
<b>Total:</b>	<b>\$900,000.00</b>

Bidder A: Direct Cost (Except Labor) as a PTB = \$900,000 ÷ \$9,000,000 X 100= **10%**.

**Direct Cost (except Labor) as a Percentage of Total Budget Points Calculation** (after determining the percentages based on the criteria above):

Lowest percentage will be awarded the maximum points. All other Proposers' percentages will be awarded points based on the following calculation: Lowest Percentage divided by Other Proposer's Percentage and then multiplied by maximum points.

**Example 9:**

Bidder A: proposed Direct Cost (Except Labor) as PTB is 10%

Bidder B: proposed Direct Cost (Except Labor) as PTB is 15%

Bidder C: proposed Direct Cost (Except Labor) as PTB is 20%

Maximum Possible Points for Labor hourly rate: **25**

Bidder A with Direct Cost (Except Labor) as PTB of 10% (lowest) will be awarded **25 Points**.

Bidder B: [10 (lowest PTB) ÷ 15 (PTB for Bidder B)] × 25 (maximum points) = [0.67] × 25 = 16.75 Bidder B with Direct Cost (Except Labor) as PTB of 15% will be awarded **16.75 points**.

Bidder C: [10 (lowest PTB) ÷ 20 (PTB for Bidder C)] × 25 (maximum points) = [0.50] × 25 = 12.50 Bidder C with Direct Cost (Except Labor) as PTB of 20% will be awarded **12.50 points**.

## Attachment 9

# Accounting and Audit Guidelines for Contracts with Caltrans

## Introduction

The purpose of this brochure is to outline for you, a potential contractor with the California State Department of Transportation (Caltrans), the basic elements of an adequate accounting system, and the types and objectives of audits that will be performed in relation to your contract. In order to successfully compete for a contract and meet the audit requirements, a contractor (whether a prime or subcontractor) must have a system of record keeping and internal control. Although a specific cost accounting system is not required, a contractor needs a system which will assure compliance with the terms of the agreement. A pre-award audit may be performed to assure you meet these requirements prior to contract execution. If your system is deficient, the contract will not be executed.

Caltrans reimburses, through your overhead rate, the costs attributable to establishing and maintaining a cost accounting system.

Staff time and other costs related to an audit performed of your contract are also normally reimbursed through your overhead rate.

## Accounting System

Contractors (whether a prime or subcontractor) planning to contract with Caltrans must have an accounting system which meets the following objectives:

- The ability to record and report financial data in accordance with generally accepted accounting principles.
- A system of record keeping ensuring that costs billed to Caltrans are:
  - Supported by adequate documentation.
  - In compliance with the terms of the contract and applicable Federal and State regulations specified in the contract.
- A system of record keeping which ideally includes the following:
  - a. A General Ledger
  - b. Job cost ledger
  - c. Labor distributions
  - d. Time records
  - e. Subsidiary journals
  - f. Chart of accounts
  - g. Financial statements
- The ability to accumulate and segregate reasonable, allocable (incurred solely for a project) and allowable (per terms of the contract) costs through the use of a cost accounting system. The following are some of the attributes which would ideally be found in such a system:
  - a. A chart of accounts which includes indirect and direct general ledger accounts. Indirect costs are not specifically identified to a project, for example, rent and/or utilities. Direct costs are specifically identified with a project, for example, drafting hours and/or design hours.
  - b. Segregation of costs by contract, category of cost and milestones (if applicable).
  - c. Proper recording of direct and indirect costs. For example, recording of labor costs should provide that non-project indirect hours be recorded on a timesheet and in the accounting records



## Attachment 9

to an administration, vacation, sick leave or other indirect cost account/code. Direct project hours should be recorded on a timesheet and in the accounting records to a direct project cost account/code.

- d. Consistent accounting treatment of costs in recording and reporting. For example, if travel expense is charged directly to a project, all travel expense incurred on any project should be considered a direct cost. As a result, project related travel, whether reimbursable per the contract terms or not, should not be included as an indirect cost.
  - e. Ability to trace from invoices submitted to Caltrans to job cost records and original, approved source documents, for example, timesheets, vendor invoices, canceled checks.
  - f. Ability to reconcile job cost records to the accounting records.
- Compliance with cost principles described in the Code of Federal Regulations 48, Federal Acquisition Regulations System (FAR), Chapter 1, Part 31. Information on how to obtain this regulation is described under "Audit Criteria" in this brochure.
  - Procedures to monitor and adjust projected overhead rates to actual rates.
  - Controls to ensure that written approval is obtained prior to any changes to the contract.
  - Procedures to retain accounting records and source documentation as required by the terms of the contract.
  - A system of internal control which provides reasonable assurance that assets are protected; financial data, records and statements are reliable; and errors and irregularities are promptly discovered, reported, and corrected. The elements of a system of internal control should include, but not be limited to, the following:
    - a. Separation of duties for proper protection of assets. Incompatible duties are those that place any person in a position to both perpetrate and conceal errors or irregularities in the normal course of business. For example, the person who writes checks should be different from the person who reconciles bank statements and the person who purchases goods should be different from the person who receives goods.
    - b. Limiting access to assets to only authorized personnel who require these assets in the performance of their assigned duties. For example, blank check stock should be locked in a safe when not in use.
    - c. Authorization and record keeping procedures which provide effective accounting control over assets, liabilities, revenues, and expenditures.
    - d. A system of practices to be followed in the performance of duties and functions. Such a system normally includes policies and procedures which establish the purpose and requirements of the accounting system. For example, timekeeping practices should ideally provide for the following:
      - Timesheets be prepared, signed, and dated by all employees.
      - Timesheets be completed in non-erasable ink.
      - Timesheet corrections be crossed-out and initialed by the employee.
      - Timesheets be signed by a supervisor as reviewed and retained on file as required by the contract.
  - e. Personnel with skills and training commensurate with their responsibilities.
  - f. A system of internal review. For example, bank reconciliations and travel expense claims should be reviewed approved and signed by a supervisor.

### Audits

Contractors, whether a prime or subcontractor, performing under a negotiated contract with Caltrans are subject to the following audits:

#### Pre-award Audits

## Attachment 9

Prior to the award of a contract, the Caltrans Audits Office will conduct a pre-award evaluation to determine if the contractor's accounting system is adequate to accumulate and segregate costs as detailed in the previous section and to determine if the proposed costs are reasonable. It alerts both the contractor and Caltrans management to problems relative to the contractor's cost proposal and cost accounting system. Due to time constraints in the award process, your cooperation in scheduling the pre-award audit with short notice will expedite the execution of your contract.

### Interim Audits

Interim audits are performed on an as needed basis. During the pre-award audit, if it is determined that the contractor's accounting system is new or minor deficiencies are noted, an interim audit is scheduled to determine that the system is functioning adequately to ensure that billed costs are supported and that any deficiencies were corrected. An interim audit may be requested by the contract administrator or by Caltrans management to address concerns during the course of the contract. Also, an audit manager may initiate an interim audit of a long duration contract to ensure that costs reimbursed to date are allowable.

### Post Audits

Post audits of contracts are performed routinely after project completion. Post audits are performed to determine whether the costs claimed are allowable, allocable, reasonable, and in compliance with the Federal and State laws and regulations as well as the fiscal provisions stipulated in the contract. The examination includes reviews of applicable laws and regulations, the contract requirements and the contractor's system of internal controls. Audit tests of the contractor's accounting records and other auditing procedures considered necessary will also be made. Applications of all audit procedures would also be governed by the individual contract under audit. Unsupported or unallowable costs are normally the result of weaknesses in the accounting system and will be reimbursed to Caltrans.

### Audit Criteria

For specific information regarding basic cost accounting systems and applicable State and Federal regulations, please see the following:

#### **Code of Federal Regulations 48, Federal Acquisition Regulations System, Chapter 1, Part 31**

This regulation contains cost principles and procedures for the pricing of contracts/subcontracts and the determination, negotiation, or allowance of costs. Contact:

Superintendent of Documents  
Government Printing Office  
Washington, DC 20402

(202) 783-3238

## Attachment 9

### **California State Administrative Manual**

A reference source for statewide policies, procedures, regulations, and information. Contact:

Documents and Publications  
Office of Procurement  
Department of General Services  
P.O. Box 1015  
North Highlands, CA 95660  
  
(916) 973-3700

For review of the above references, contact your local library or the California State Library.

California State Library/Library and Courts Building  
914 Capitol Mall  
P.O. Box 942837  
Sacramento, CA 94237-0001  
Information: (916) 654-0261

For assistance in establishing an accounting system which will meet the objectives outlined in this brochure, you should contact an accountant and/or bookkeeper who is familiar with cost accounting systems.

Caltrans is an affirmative action employer. Equal opportunity is offered to all regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation. Contractors that contract with Caltrans are responsible for taking necessary and reasonable steps to achieve these same goals.

## **Attachment 10**

**Note to Bidders: The following pages represent a sample of the Agreement that will be awarded, if any, from this RFP. Please review it carefully and present any questions in writing to the contact identified for this RFP.**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER <b>95A0080</b>	PURCHASING AUTHORITY NUMBER (If Applicable)
------------------------------------	---

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

CONTRACTING AGENCY NAME

California Department of Transportation (Caltrans)

CONTRACTOR NAME

TBD

2. The term of this Agreement is:

START DATE

February 1, 2022 (estimate) or upon DGS approval, whichever is later

THROUGH END DATE

January 31, 2025 (estimate)

3. The maximum amount of this Agreement is:

TBD

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	5
Exhibit B	Budget Detail and Payment Provisions	2
Exhibit C *	General Terms and Conditions (GTC 04/2017)	online
+ - Exhibit D	Special Terms and Conditions	9
+ - Exhibit E	Additional Provisions	12
+ - Attachment 1	Cost Proposal (to be attached upon award)	TBD
+ - Attachment 2	Technical Proposal (to be attached upon award)	TBD
+ - Attachment 3	Bidder Declaration, GSPD-05-105 (to be attached upon award)	2
+ - Attachment 4	Caltrans Intellectual Property (IP) Copyright Assignment Agreement Form (to be signed upon award)	2
+ - Attachment 5	Caltrans Intellectual Property (IP) Nondisclosure Agreement Form (to be signed upon award)	3

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

TBD

CONTRACTOR BUSINESS ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 95A0080	PURCHASING AUTHORITY NUMBER (If Applicable)
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

California Department of Transportation (Caltrans)

CONTRACTING AGENCY ADDRESS

1727 30th Street, MS-65

CITY

Sacramento

STATE

CA

ZIP

95816

PRINTED NAME OF PERSON SIGNING

TITLE

Contract Officer

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

**Exhibit A  
 Consulting Services Agreement (State)**

**Scope of Work**

1. The work to be performed under this Agreement shall be in accordance with Contractor's Cost Proposal dated TBD, **Attachment 1**, Contractor's Technical Proposal entitled **Caltrans Clean California Public Education Campaign**, dated TBD, **Attachment 2**, and the Scope of Work in this Agreement. Contractor's Cost and Technical Proposals are attached hereto and incorporated by reference. If there is any conflict between Contractor's Cost and Technical Proposals, on the one hand, and any other provisions of this Agreement, including, but not limited to Exhibits A, B, C, D, and E, and **Attachments 3, 4 and 5**, on the other hand, the latter will prevail over Contractor's Cost and Technical Proposals.
2. Contractor (hereinafter sometimes referred to as Consultant) agrees to provide **Caltrans Clean California Public Education Campaign** services to the California Department of Transportation (Caltrans), as described herein.
3. This Agreement will commence on **March 15, 2022 (estimate)** or upon approval by Department of General Services (DGS), whichever is later, and no work shall begin before that time. This Agreement is of no effect unless approved by DGS. Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Caltrans Contract Manager. This Agreement shall expire on **March 14, 2025 (estimate)**. The services shall be provided during working hours, Monday through Friday, except holidays.
4. All inquiries during the term of this Agreement will be directed to the project representatives listed below:

<b>Department of Transportation</b>	<b>Contractor:</b> TBD
Section/Unit: Division of Public Affairs	Section/Unit
Contract Manager: TBD	Project Manager:
Address: 1120 N Street, MS-49	Address:
Sacramento, CA 95814	
Phone: (916) 501-xxxx	Phone:
Email: xxx@dot.ca.gov	Email:

**5. Detailed description of work to be performed and duties of all parties:**

A. Project Overview

The Contractor shall organize and coordinate a comprehensive statewide advertising campaign and marketing program and provide public relations activities to redefine and/or broaden current (Stormwater Litter Prevention) and past litter prevention campaigns (This, not That, Protect Every Drop and Don't Trash California), that focuses on educating the public about activities and behaviors that can reduce pollution, including trash, litter, illegal dumping, as well as promote the programs of Clean California.

## **Exhibit A Consulting Services Agreement (State)**

### **B. Project Background**

Trash has plagued California's streets and highways for decades, undermining Caltrans' vast public transportation system's safety, efficiency, and aesthetics, as well as compromising the department's commitment to addressing social equity and environmental impacts. Caltrans spends \$60 million annually to remove litter from the highway, taxpayer dollars that could be invested elsewhere in maintaining the state's highways. To address the many interconnected problems posed by trash, the \$1.1 billion Clean California initiative will beautify communities through litter pick-up, community engagement, local projects and public education thereby transforming unsightly roadsides into shared public spaces of pride for all Californians.

Clean California will potentially fund projects in all of the state's 58 counties, with a third of the funds going directly to cities, counties, tribes, and transit agencies to clean local streets and public spaces, creating career opportunities and jobs for veterans, students, artists, people experiencing homelessness, and those re-entering society from incarceration. Specifically, Clean California aims to invest: \$418 million in litter abatement over three years; \$287 million in state beautification projects over two years; \$296 million in local beautification projects over two years; \$62 million in project design, construction, local support and engagement; as well as \$33 million for a three-year series of innovative and motivational public education campaign. Showing progress will be crucial to help justify the need for additional funding.

#### **Key Action Areas**

- **Engage & Invest in Communities:** Create jobs while cleaning and beautifying local roads through community grants.
- **Education:** Drive a cultural shift of shared responsibility for the cleanliness of our roadways through litter prevention education campaigns that focus on properly throwing away trash and the impact littering has on natural resources, waterways, public safety and health.
- **Expand Litter Removal:** Significantly reduce trash from state highways and local roads by strengthening trash collection by Caltrans, community service programs and Adopt-a-Highway volunteers. Increase access to waste facilities and provide free monthly disposal sites throughout the state.
- **Enhance Infrastructure:** Implement sustainable beautification projects.

### **C. Project Purpose**

The purpose of the project is to develop and execute a multi-faceted public outreach initiative to create a variety of well-coordinated and complementary statewide marketing campaigns, public relations activities, and media services designed to educate the public about Clean California and to change their behavior. By doing so, Caltrans and the selected consultant/vendor will create a deep, widespread, quantifiable, and sustainable cultural shift in public attitudes by engendering community pride and enthusiastic, effective civic action based on a shared understanding that will empower California to successfully address the interrelated economic, environmental, aesthetic, and public health problems caused by trash, littering, and illegal dumping. Education is a vital tool. It is necessary to create a cultural shift of shared responsibility for the cleanliness of our roadways through litter prevention education campaigns that focus on properly throwing



**Exhibit A**  
**Consulting Services Agreement (State)**

away trash and the impact littering has on natural resources, waterways, public safety and health. Although it is a new program, the Clean California campaign will build upon previous anti-litter campaigns such as This, not That, Protect Every Drop and Don't Trash California.

D. Description of Services

- 1) The Contractor shall obtain approval to participate in all events or programs from the Caltrans Contract Manager at least four (4) weeks in advance.
- 2) Consultant tasks:

Task	Task Description
1	The Contractor shall conduct a pre-advertising awareness study within 45 calendar days of contract award to measure effectiveness of past litter prevention campaigns ( <a href="#">This, not That</a> , <a href="#">Protect Every Drop</a> , <a href="#">Don't Trash California</a> , and <a href="#">Clean California</a> ). Awareness is considered an indicator for a decrease in trash, littering, illegal dumping, and pollutants of concern for the protection and preservation of California's environment.
2	The Contractor shall develop a multi-faceted public outreach initiative to create a variety of well-coordinated and complementary statewide marketing campaigns, public relations activities, and media services designed to educate the public about Clean California and to change their behavior when it comes to litter and the environment. The campaign emphasis shall be on reducing trash, littering, illegal dumping and pollutants, and educating the public to protect and preserve California's environment. The Contractor shall develop strategies to reduce littering and illegal dumping, securing vehicle loads, and other ideas to raise public awareness on pollution prevention. Contractor shall propose and develop strategic public and private partnerships (including those from previous anti-litter campaigns) that will help maximize resources, or added value, and increase effectiveness of the campaign.
3	The Contractor, or its intended subcontractors, shall create content and copy for publishing to the existing Clean California website ( <a href="https://cleancalifornia.dot.ca.gov">https://cleancalifornia.dot.ca.gov</a> ) that is hosted and managed by Caltrans' Web Design Team on their content management system, Sitecore. All content will be overseen by the Caltrans contract manager in conjunction with the Clean California program. All content is required to be compliant with Caltrans Information Technology Standards and Caltrans ADA requirements. Text and content provided must comply with Web Content Accessibility Guideline's (WCAG) 2.1 Level AA standard ( <a href="https://www.w3.org/TR/WCAG/">https://www.w3.org/TR/WCAG/</a> ). Content submitted without a PAC3 report or MS Accessibility checker screenshot will not be approved by Caltrans Contract Manager for

**Exhibit A**  
**Consulting Services Agreement (State)**

	<p>publishing by the Caltrans Web Design Team. All text and content provided by Contractor shall be remediated to the Web Content Accessibility Guidelines 2.1 Level AA standards. Caltrans will not be responsible for remediation.</p>
4	<p>The Contractor shall provide draft press releases and media advisories, alerts, social content to the Caltrans contract manager for approval three (3) weeks prior to the issuance date of the release.</p>
5	<p>The Contractor shall conduct market research (such as focus groups and intercepts) to test the Contractors proposed creative ideas, within 45 days after contract execution.</p>
6	<p>The Contractor shall prepare a press release announcing the kick-off of the campaign within 90 days after contract execution. The press release (and related media advisories, alerts, and materials) shall be forwarded to the Caltrans contract manager for approval at least three (3) weeks prior to the issuance date of the release.</p>
7	<p>The Contractor shall effectively incorporate any relevant, additional regulatory requirements or new messaging opportunities into the campaign as directed by the Caltrans contract manager.</p>
8	<p>The Contractor shall participate in a minimum of ten (10) large coastal/statewide cleanup activities per year, with community involvement, where quantitative data of trash and participation is tracked. Locations shall be determined as part of the public outreach plan, seeking to reach all 12 districts.</p>
9	<p>The Contractor shall, on an ongoing basis, continue to build strategic public and private partnerships (including those from prior anti-litter campaigns) that will help maximize resources, or added value, and increase effectiveness of the campaign. Status reports on activities of strategic public and private partnerships, and opportunities for new or additional partnerships, will be presented at quarterly status meetings. Status meetings shall be attended by the contractor and the Caltrans contract manager and reports shall be included in quarterly reports.</p>
10	<p>The Contractor shall hold quarterly status meetings in addition to weekly meetings, if needed and as determined by the Caltrans contract manager, for guidance and direction at critical junctures. The Contractor shall support the development of meeting products, including agendas, presentations (if needed) and minutes that contain action items, with assignments and outcomes for each meeting.</p>
11	<p>The Contractor shall submit quarterly reports to the Caltrans contract manager documenting activities that have taken place in the previous</p>

**Exhibit A**  
**Consulting Services Agreement (State)**

	quarter by the 15 <sup>th</sup> of the following month (March, June, September, and December), including contract dollars expended and remaining funds.
12	The Contractor shall conduct a mid-campaign survey by February 2023, and work with the Caltrans contract manager to adjust strategies as needed.
13	The Contractor, or its intended subcontractor, shall develop and submit yearly analytical reports on statewide trash collection data factoring in a baseline and yearly campaign results.
14	The Contractor shall conduct a post-advertising awareness study 90 days before the end of the contract. These awareness statistics will be compared to determine campaign effectiveness. Quantifiable data collected during the life of the campaign shall be analyzed and reported.
15	The Contractor shall develop a final report, including quantitative data and conclusions, by January 15, 2025, or as directed by the Caltrans Contract Manager

6. Contractor, in collaboration with Caltrans staff, shall provide assistance with Public Relation Services (PRS), including, but not limited to, public service announcements, press releases, broadcast media, media kits, news conferences, outreach activities/events, public engagement activities/events, social media, web content, graphic design, project branding and fact sheets when necessary.

All PRS-related work performed by Contractor shall be appropriately reviewed and approved by Caltrans Contract Manager and Caltrans District Chief Public Relations Officer (PIO)/Assistant Deputy Director of Public Affairs prior to implementation/release. Caltrans Contract Manager/District Chief PIO will report all PRS-related activities and events to Caltrans Headquarters Public Affairs Office for inclusion in the Week Ahead Report (WAR) and the Day Ahead Report (DAR).

Contractor shall comply with Governor's Memo 02-18-2011 that prevents State spending on promotional and marketing items.

**Exhibit B**  
**Consulting Services Agreement (State)**

**Budget Detail and Payment Provisions**

**1. Invoicing and Payment**

- A. For litter prevention and outreach services satisfactorily rendered, and upon approval of services by Caltrans Contract Manager, and upon receipt and approval of the invoices, Caltrans agrees to compensate Contractor for actual expenditures incurred in accordance with the rates in **Attachment 1** and this **Exhibit B**. Incomplete or disputed invoices shall be returned to Contractor, unpaid, for correction.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Department of Transportation  
Division of Public Affairs  
Attention: TBD, Contract Manager  
1120 N Street, MS-49  
Sacramento, CA 95814

- C. Tasks and deliverables in progress may be invoiced in arrears for the costs incurred during the billing period. Invoices must be itemized and provide detail on the specific progress toward the completion of the tasks and deliverables in accordance with the Contractor's **Cost Proposal, Attachment 1**, and include supporting documentation. Caltrans shall retain 10% of each invoice until satisfactory completion of all work under this Agreement as determined by the Caltrans Contract Manager.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

**2. Budget Contingency Clause**

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. Pursuant to Government Code Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.
- E. Caltrans has the option to terminate the Agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.

**Exhibit B**  
**Consulting Services Agreement (State)**

**3. Prompt Payment Clause**

- A. Payment will be made in accordance with, and within the time specified in, Government Code, Chapter 4.5, commencing with Section 927 and all agreements must comply with Public Contract Code Sections 10262 and 10262.5.
- B. Pursuant to Public Contract Code Section 10262, Contractor shall pay its Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by Caltrans.
- C. Failure of Contractor adhering to Public Contract Code Section 10262 may result in termination of this Agreement per Public Contract Code Section 10253 and disciplinary action by the Contractors State License Board may be implemented

**4. Rates**

- A. Rates for these services may be found on **Attachment 1** of this document.
- B. If Contractor has not entered into an Agreement with a Federal Agency and therefore is not bound by that Federal Agency's negotiated rates, the basis for determining overhead and indirect costs shall be based upon the cost principles as outlined in **Section 6**.

**5. Allowable Costs and Payments**

- A. Transportation and subsistence costs shall not exceed rates authorized to be paid non-represented State employees under current California Department of Human Resources (CalHR) rules.
- B. Contractor shall not commence performance of work or services until this Agreement has been approved by Caltrans. No payment will be made prior to approval nor for any work performed prior to approval of this Agreement.

**6. Cost Principles**

- A. Contractor agrees that the Contract Cost Principles and Procedures in 48 CFR, Part 31, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in 2 CFR, Part 200, shall be used to determine the allowable individual items of cost.
- B. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Part 31, or 2 CFR, Part 200, are subject to repayment by Contractor to Caltrans.
- C. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

**7. Excise Tax**

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

**Exhibit D**  
**Consulting Services Agreement (State)**

**Special Terms and Conditions**

**1. Settlement of Disputes**

- A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by Caltrans Contract Officer, who may consider any written or verbal evidence submitted by Contractor. The decision of the Caltrans Contract Officer, issued in writing, shall be Caltrans' final decision on the dispute.
- B. Neither the pendency of a dispute nor its consideration by Caltrans Contract Officer will excuse Contractor from full and timely performance in accordance with the terms of the Agreement.

**2. Termination**

- A. If, after award and execution of the Agreement, Contractor's performance is unsatisfactory, the Agreement may be terminated for default. Additionally, Contractor may be liable to Caltrans for damages including the difference between Contractor's original bid price and the actual cost of performing the work by another Contractor. Default is defined as Contractor failing to perform services required by the Agreement in a satisfactory manner.
- B. Caltrans reserves the right to terminate this Agreement for any or no cause upon 30 days written notice to Contractor or immediately in the event of default or material breach by Contractor.
- C. The State may terminate this Agreement immediately for good cause. The term "good cause" may be defined as "impossibility of performance" or "frustration of purpose," but does not include material breach, default, or termination without cause. In this instance, the Agreement termination shall be effective as of the date indicated on the State's notification to the Contractor.
- D. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this Agreement with 30 days' notice to Contractor.

**3. Evaluation of Contractor**

Performance of Contractor under this Agreement will be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation (STD 4), and maintained in the Office file, and DGS, Office of Legal Services, if the evaluation is negative and the contract price is over \$5,000.

**4. Non-Solicitation**

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

**Exhibit D**  
**Consulting Services Agreement (State)**

**5. Subcontractors**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
- B. Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted except for subcontractors listed on the **Bidder Declaration (GSPD-05-105), Attachment 3**.
- C. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- D. Any substitution of subcontractors must be approved in writing by the Caltrans Contract Manager in advance of assigning work to a substitute subcontractor.

**6. Contractor's Reports and/or Meetings**

- A. Contractor shall submit progress reports at least once a month to allow Caltrans Contract Manager to determine if Contractor is performing to expectations or is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special problems encountered so that remedies can be developed.
- B. Contractor shall meet with Caltrans Contract Manager as needed to discuss progress on the Agreement.
- C. Prior to completion of the Agreement, Contractor shall hold a final meeting with Caltrans Contract Manager to present findings, conclusions and recommendations and shall submit a comprehensive final report on the project.
- D. Any document or written report prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, a list of all agreements and subcontracts (including dollar amounts) relating to the preparation of those documents or reports if the combined costs for work by non-employees of Contractor exceed \$5,000.

**7. Publication**

- A. Other than as provided in **sections 3 through 6 of Exhibit E** hereof, the Contractor shall not copyright any deliverable(s) developed and funded under this Agreement.
- B. Contractor shall have the right to publish any and all information, conclusions and developments (except that which is designated as **CONFIDENTIAL** by the State resulting from work conducted under this Agreement).
- C. Any publication by Contractor shall give proper credit to the State. All publications shall bear an appropriate inscription acknowledging the State's copyright ownership to the Work and Deliverable(s) (including but not limited to, all reports, design materials, advertisements, training materials, writings, articles, computer programs, inventions and any documentation related to the Agreement) consisting of a "c" in a circle followed by the four-digit year in

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**Consulting Services Agreement (State)**

which the Work or Deliverable was produced, followed by the words "California Department of Transportation. All rights reserved."

- D. Contractor shall submit to the State any materials released for publication simultaneously with submission to the publisher for the purpose of comment and review by the State with respect to the presence of patentable, confidential, and/or proprietary subject matter within the materials released for publication.
- E. Caltrans will take all reasonable steps to have United States Patent Applications, or other appropriate protection of intellectual property, filed prior to the time the information, conclusions or developments are published or otherwise made available to the public.
- F. Contractor agrees to keep confidential any proprietary information supplied to it by the State during the course of the Agreement and designated in writing as "**CONFIDENTIAL**". Such information will not be included in any published material without the prior written approval of the parties.
- G. All publications shall contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This publication does not constitute a standard, specification or regulation."

**8. Confidentiality of Data**

- A. All financial, statistical, personal, technical, or other data and information relative to Caltrans' operations, which is designated confidential by Caltrans and made available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use and disclosure.
- B. Permission to disclose information on one (1) occasion or public hearing held by Caltrans relating to this Agreement shall not authorize Contractor to further disclose such information or disseminate the same on any other occasion.
- C. Contractor shall not comment publicly to the press or any other media regarding this Agreement or Caltrans' actions on the same, except to Caltrans' staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- D. Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by Caltrans and receipt of Caltrans' written permission.
- E. All information related to the construction estimate is confidential and shall not be disclosed by Contractor to any entity, other than Caltrans.
- F. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

**9. State-Owned Data—Integrity and Security**

- A. Contractor shall comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:



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**Consulting Services Agreement (State)**

- 1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect Caltrans data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.

Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.

- 2) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
  - 3) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
  - 4) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
  - 5) Notify Caltrans Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
  - 6) Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.
- B. Contractor shall use the State-owned data only for State purposes under this Agreement.
- C. Contractor shall not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s) (State Administrative Manual (SAM) Section 5335.1).

**10. Report Disabled Veteran Business Enterprise (DVBE) Utilization**

If this Agreement requires DVBE participation, it is the responsibility of Contractor to track DVBE goal progress and Contractor must report the actual amount paid to certified Subcontractors. Contractors must comply with Government Code Section 14841 and Military and Veterans Code Sections 999.5(d) and 999.7 by reporting the actual utilization of certified Subcontractor(s) during the performance of this Agreement. Contractor shall prepare and submit the Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State Funded Contracts Only (ADM-3059)

(<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM3059>) to Caltrans Contract Manager with each invoice.

If Contractor fails to submit the ADM-3059 with the final invoice, Caltrans Contract Manager shall withhold \$10,000, or the full payment if it is less than \$10,000, from the final payment on the Agreement until Caltrans Contract Manager receives a complete and satisfactory ADM-3059. Caltrans Contract Manager shall notify Contractor by email that Contractor must submit a complete and satisfactory ADM-3059 within 30 days from the date of the notice. If Contractor fails to fully complete and submit the ADM-3059 from within this 30-day period, Caltrans shall permanently withhold payment of the final invoice.

## Exhibit D Consulting Services Agreement (State)

Upon Caltrans Contract Manager's request, Contractor shall provide proof of payment for the work performed by the DVBE subcontractor(s).

### 11. Reporting Small Business/Micro Business (SB/MB) Utilization

If SB/MB Subcontractor participation is a requirement of this Agreement, Contractor must report the actual amount paid to certified Subcontractors. Contractor must comply with Government Code Section 14841 by reporting the actual utilization of certified Subcontractor(s) during the performance of this Agreement. Contractor shall prepare and submit the Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State Funded Contracts Only (ADM-3059) (<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?fmid=ADM3059>) to Caltrans Contract Manager with each invoice.

### 12. DVBE Participation (With Goals)

- A. Contractor has complied with the requirements of Public Contract Code Sections 10115 et seq. DVBE goals achieved are expressed as a percentage of the estimated dollar value of this Agreement and are identified on the **Bidder Declaration (GSPD-05-105), Attachment 3**.
- B. The following goals are Contractor's commitment set forth in this Agreement based upon the estimated total dollar amount to be expended\*

TBD% of work for DVBE(s) \*If this Agreement is amended and the additional work can be included in the subcontracted work, the goals may be amended to reflect this change. A revised **Bidder Declaration form, GSPD-05-105** must be attached to and made a part of the amended Agreement.

### 13. Substitutions of DVBEs

DVBE subcontractors shall be used per the California Code of Regulations, Title 2, Section 1896.70 unless a substitution is approved in writing by the DGS, Office of Small Business and Disabled Veteran Business Enterprise (OSDS). A DVBE subcontractor shall be replaced by another DVBE to perform the work originally stated. The substitution shall maintain, at minimum, the level of participation goal stated in the bid.

- A. Contractor shall simultaneously notify the DVBE and Caltrans Contract Manager of the intended substitution. The written notice shall contain the reasons for the substitution and be sent by certified mail. Contractor shall submit the following to Caltrans Contract Manager:
  - 1) proof of delivery, provide the certified mail receipts.
  - 2) A copy of the DVBE's consent or opposition to the substitution. In the absence of the consent or opposition, provide the returned and unopened certified mail.
  - 3) The name and supplier number of the business being substituted and the name and supplier number of the proposed replacement. If a DVBE cannot be identified as a replacement, the Contractor shall document the absence of DVBEs. This documentation shall include but is not limited to:
    - a. Contact the Caltrans Small Business Advocate at [smallbusiness.advocate@dot.ca.gov](mailto:smallbusiness.advocate@dot.ca.gov) and the Department of Veterans Affairs at [advocate@calvet.ca.gov](mailto:advocate@calvet.ca.gov) regarding the absence of DVBEs to perform the specific work.
    - b. Search results from the DGS website for DVBEs to perform the specific work.

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- c. Communication with a DVBE Community Organization nearest the worksite regarding the absence of DVBEs, if applicable.
  - d. Documented communication with DVBEs describing the work to be performed, its percentage of the overall contract, the corresponding dollar amount, and their responses to the request.
- B. The DVBE shall have up to five (5) business days from the postmark date to consent or oppose the substitution. A copy of the DVBE's reply shall be sent simultaneously by certified mail to the Contractor and the Caltrans Contract Manager.
- C. When written oppositions to a substitution are filed, Caltrans shall grant the DVBE a hearing. The hearing notice shall be issued within five (5) business days from receipt of the opposition. If Caltrans grants the substitution, continue to G, below.
- D. Caltrans Contract Manager shall submit the substitution request to the DGS, OSDS:
  - 1) The request must meet the criteria as specified above or Section 4107 of the Public Contract Code for Public Works.
  - 2) The substitution request shall be accompanied by the hearing decision, when applicable.
- E. The OSDS will respond to substitution requests within three (3) business days. The OSDS shall consent to the substitution of another DVBE, or in the absence of a DVBE, a California certified Small Business in any of the following situations:
  - 1) When the DVBE becomes bankrupt, insolvent or goes out of business.
  - 2) When the DVBE does not perform as listed in the Bidder Declaration.
  - 3) When the DVBE does not meet the bond requirements of the contractor.
  - 4) When the DVBE's name is incorrect due to an inadvertent clerical error. In the case of public works contracts, compliance with § 4107.5 of the Public Contract Code is required.
  - 5) When the DVBE is not licensed as required by any State of California regulatory agency.
  - 6) When Caltrans, or its duly authorized officer, determines that the DVBE:
    - a. Did not perform in accordance with the plans and specifications; or
    - b. Has delayed or disrupted the progress of the work.
- F. The DVBE substitution process shall not be used as an excuse for noncompliance with any provision of law. This includes, but is not limited to, the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 et seq.) or any Agreement requirements relating to substitution of subcontractors.
- G. Contractors who proceed with work pending a substitution decision may be subject to Agreement termination, recovery of damages under rights, remedies and penalties. This is outlined in Military and Veterans Code Section 999.9, Public Contract Code Sections 10115.10 or 4110 (applies to public works only). Failure to adhere to the DVBE participation in the performance of the Agreement may be cause for Agreement termination and recovery of damages under the rights and remedies due Caltrans.
- H. Any DVBE firm acting/working under subcontract must be responsible for providing materials, supplies, equipment or services and must carry out its responsibility by actually

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performing, managing, or supervising the work involved that is normal for its business services and functions.

- I. The Contractor shall maintain records of all subcontracts entered into with DVBE Subcontractors including records of materials purchased from DVBE suppliers. Such records shall show the name and address of each DVBE Subcontractor or supplier and the total dollar amount paid to each one. Upon completion of the Agreement, a summary of these records shall be prepared and certified correct by Contractor or his authorized representative and the summary shall be furnished to the Caltrans Contract Manager.

**14. Retention of Records/Audits**

- A. For the purpose of determining compliance with Government Code Section 8546.7, Contractor and Subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including, but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The State, the State Auditor, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

**15. Prohibition from Bidding**

This Agreement is subject to the provisions of Public Contract Code Section 10365.5, which states: "No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, goods or supplies, or any other related action which is required, suggested or otherwise deemed appropriate in the end product of the original consulting services contract."

**16. Consultant Contractor's Rights and Obligations**

Contractor is advised that the provisions of Public Contract Code Sections 10335 through 10381 pertaining to the duties, obligations, and rights of a consultant service Contractor are applicable to this Agreement.

**17. Audit Review Procedures**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Chairperson of the Audit Review Committee (ARC). The ARC will consist of the Deputy Director, Audits and Investigations (Chairperson); Deputy Director of the functional Program area; the Chief Counsel, Legal Division, or their designated alternates; and if Caltrans chooses, two representatives of Caltrans' choosing, from private industry. The two representatives from private industry will be advisory in nature only and will not have voting rights. Additional members or their alternates may serve on the ARC.
- B. Not later than 30 days after issuance of the final audit report, Contractor may request a review by the ARC of unresolved audit issues. The request for review will be submitted in

## **Exhibit D Consulting Services Agreement (State)**

writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the appropriate Chief Deputy Director. The Chief Deputy Director will make the final decision for Caltrans. The final decision will be made within three (3) months of receipt of the notification of dispute.

- C. Neither the pendency of a dispute nor its consideration by Caltrans will excuse Contractor from full and timely performance, in accordance with the terms of this Agreement.

### **18. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards**

In addition to, and not a limitation of, Contractor's indemnification obligations contained elsewhere in this Agreement, Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind, or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents and/or employees.

### **19. ADA Compliance**

All entities that provide electronic or information technology or related services that will be posted online by Caltrans must be in compliance with Government Code Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.

### **20. Force Majeure**

Except for defaults of Subcontractors, neither party shall be liable to the other for any delay in, or failure of, performance, nor shall any such delay in, or failure of, performance constitute default, if such delay or failure is (directly or indirectly) caused by "Force Majeure" without the fault, intentional act, or negligence of the Contractor. As used in this section, "Force Majeure" shall include, but shall not be limited to, acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, interruption in service by a regulated utility, or governmental statutes or regulations superimposed after the fact.

If a delay in, or failure of, performance by Contractor arises out of a default of its Subcontractor, and if such default of its Subcontractor arises out of causes beyond the (direct or indirect) control of both Contractor and Subcontractor, and without the fault, intentional act, or negligence

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of either of them, Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule.

**21. Electronic Signatures**

Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures for this Agreement. Documents that are referenced by this Agreement may still require manual signatures.

**Exhibit E**  
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**Additional Provisions**

**1. General Provisions Required in all Insurance Policies**

- A. Deductible: Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
- B. Coverage Term: Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the Caltrans Contract Manager at least ten (10) days prior to the expiration of the insurance. Any new insurance must continue to comply with the original terms of this Agreement 95A0080.
- C. Policy Cancellation or Termination and Notice of Non-Renewal: Contractor shall provide, to the Caltrans Contract Manager within five (5) business days, following receipt by Contractor, a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Contractor fails to keep, in effect at all times, the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- D. Primary Clause: Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.
- E. Inadequate Insurance: Inadequate or lack of insurance does not negate the Contractor's obligations under this Agreement.
- F. Endorsements: Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- G. Insurance Carrier Required Rating: All insurance companies must carry a rating acceptable to the Department of General Services, Office of Risk and Insurance Management (ORIM). If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Department of General Services, ORIM Website: <https://www.dgs.ca.gov/ORIM>.
- H. Contractor shall include all of its subcontractors as insureds under Contractor's insurance or supply evidence of insurance to the State equal to the policies, coverages, and limits required of Contractor.
- I. The State will not be responsible for any premiums or assessments on the policy.

**2. Insurance Requirements**

- A. Commercial General Liability
  - 1) Contractor shall maintain general liability on an occurrence form with limits not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include:

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Caltrans, State of California, its officers, agents, employees and servants are included as additional insured but only with respect to work performed under this Agreement.

2) This endorsement must be supplied under form acceptable to DGS, ORIM.

**B. Automobile Liability**

Contractor shall maintain motor vehicle liability with limits not less than **\$1,000,000** combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle, including owned, hired, and non-owned motor vehicles. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

**C. Workers' Compensation and Employer's Liability**

Contractor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of **\$1,000,000** are required. When work is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to the Caltrans Contract Manager.

**D. Professional Liability**

Contractor shall maintain Professional Liability at **\$1,000,000** covering any damages caused by a negligent error, act, or omission. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of this Agreement work. The Contractor is responsible to maintain continuous coverage for up to three (3) years after the notice of completion.

**E. Satisfying a Self-Insured Retention (SIR)**

All insurance required by this contract must allow, but not require, the State to pay any SIR and/or act as the Contractor's agent in satisfying any SIR. The choice to pay any SIR and/or act as the Contractor's agent in satisfying any SIR is at the State's discretion. If the State chooses to pay any SIR and/or act as the Contractor's agent in satisfying any SIR, the Contractor shall reimburse the State for the same.

**F. Available Coverages/Limits**

In the event the insurance coverages obtained by the Contractor is broader in scope than, and/or the limits are higher than, those required under the contract, all such broader coverage and/or higher limits available to the Contractor shall also be available and applicable to the State.

**3. OWNERSHIP OF INTELLECTUAL AND PROPRIETARY PROPERTY**

For the purposes of this section (**Ownership of Intellectual Proprietary Property**) of **Exhibit E** of Contract **95A0080** (herein after referred to as "this Agreement") the following definitions shall apply:

**Work:** As delineated in **Exhibit A** of the Agreement.



## **Exhibit E Consulting Services Agreement (State)**

**Intellectual Property:** means technical information, inventions, developments, discoveries, know-how, methods, techniques, formulae, algorithms, data, processes and other proprietary ideas, whether or not patentable or copyrightable, patent applications, patents, copyrights, trademarks, trade secrets, and any other legally protectable information, including computer software.

**Intellectual Property Work ("Work"):** means any work or activity performed by the Contractor or jointly with the Contractor's Subcontractor and/or the Contractor's Subcontractor's employee's with one or more employees, within the scope of performance of any Caltrans Intellectual Property Work effort, pursuant to the Statement of Work (SOW), or any other written terms in this Agreement and paid by the California Department of Transportation (Caltrans).

**Government:** means Caltrans.

**Project Research Data:** means information including, without limitation, documents, drawings, models, designs, data, memoranda, tapes, drives, disks, any other electronic storage medium, records, and databases, in hard copy form or in electronic form, developed during performance of the Work and regardless of whether paid for by Caltrans, its Contractor(s)/Grant Recipient(s), or subcontractors.

**Work Product:** As defined as Deliverable in **Exhibit A** of the Agreement including but not limited to, all Work and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six (6) months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. "Work Product" includes all deliverables, inventions, innovations, improvements, or other works of authorship Contractor may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.

**Inventions:** Any idea, methodologies, design, concept, technique, invention, discovery, improvement or development which is or may be patentable or otherwise protectable under Title 35 of the United States Code made solely by the Contractor or jointly with the Contractor's Subcontractor and/or the Contractor's Subcontractor's employee's with one or more employees during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

**Subject Invention:** Any [invention](#) of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

**Practical Application:** To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the [invention](#) is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

**Made:** When used in relation to any [invention](#) means the conception or first actual reduction to practice of such [invention](#).

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**Consulting Services Agreement (State)**

**Small Business Firm:** A small business firm as defined at section 2 of Pub. L. 85-536 ( [15 U.S.C. 632](#)) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at [13 CFR 121.3-8](#) and [13 CFR 121.3-12](#), respectively, will be used.

**Nonprofit Organization:** A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 ( [26 U.S.C. 501\(c\)](#)) and exempt from taxation under section 501(a) of the Internal Revenue Code ( [25 U.S.C. 501\(a\)](#)) or any nonprofit scientific or educational organization qualified under a state [nonprofit organization](#) statute.

**A. OWNERSHIP OF WORK PRODUCT AND RIGHTS:**

- 1) **OWNERSHIP OF WORK PRODUCT:** Except in regard to Pre-existing Works, all Work Product derived by the Work performed by the Contractor, its employees or by any of the Contractor's Subcontractor's employees under this Agreement, shall be owned by Caltrans and shall be considered works made for hire by the Contractor's Subcontractor for Caltrans. Caltrans shall own all United States and international copyrights in the Work Product.

As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation.

- 2) **VESTING OF COPYRIGHT RIGHTS:** Contractor, its employees or any of Contractor's Subcontractor's employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to Caltrans, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor's Subcontractor from Caltrans. Contractor, its employees or any of Contractor's Subcontractor's employees agree to execute the attached Copyright Assignment, attached to this Agreement as **Attachment 4**, acknowledging Caltrans undivided copyright interest to the Work. From time to time upon Caltrans' request, the Contractor's Subcontractor and/or its employees shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as Caltrans may request. Caltrans, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

**B. INVENTIONS**

- 1) **VESTING OF PATENT RIGHTS:** The Contractor, its employees and any Contractor's Subcontractors hereby agrees to assign to Caltrans, its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefore

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- and to claim all rights or priority there under, and the same shall become and remain Caltrans' property regardless of whether such protection is sought. The Contractor, its employees and Contractor's Subcontractor shall promptly make a complete written disclosure to Caltrans of each Invention not otherwise clearly disclosed to Caltrans in the pertinent Work Product, specifically pointing out features or concepts that the Contractor, its employees and Contractor's Subcontractor believes to be new or different. Contractor, its employees and Contractor's Subcontractor agree to execute the attached Non-Disclosure Agreement, attached to this Agreement as **Attachment 5**. The Contractor, its employees and Contractor's Subcontractor shall, upon Caltrans' request and at Caltrans' expense, cause patent applications to be filed thereon, through solicitors designated by Caltrans, and shall sign all such applications over to Caltrans, its successors, and assigns. The Contractor, its employees and Contractor's Subcontractor shall give Caltrans and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as Caltrans may consider necessary or appropriate to carry out the intent of this Agreement.
- 2) **AGENCY:** In the event that Caltrans is unable for any reason whatsoever to secure the Contractor's, its employees' and/or Contractor's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees and Contractor's Subcontractor hereby irrevocably designates and appoints Caltrans and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Contractor, its employees and Contractor's Subcontractor's behalf and stead, to execute and file such applications and do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or thereon with the same legal force and effect as if executed by Contractor, its employees and/or Contractor's Subcontractor. Caltrans shall have no obligations to file any copyright, trademark, or patent applications.
- 3) **AVOIDANCE OF INFRINGEMENT:** In performing services under this Agreement, Contractor and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor or its employees becomes aware of any such possible infringement in the course of performing any work under this Agreement, Contractor or its employees shall immediately notify Caltrans in writing.
- 4) **PRE-EXISTING WORKS AND LICENSE:** Contractor acknowledges that all Work Product shall be the sole and exclusive property of Caltrans, except that any pre-existing works created by Contractor and third parties outside of the Agreement but utilized in connection with the Agreement (the "Pre-existing Works") shall continue to be owned by Contractor or such parties. Contractor agrees to notify Caltrans' Contract Manager in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants Caltrans, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-

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terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Pre-existing Works with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated into the Work Product resulting from this Agreement.

**C. ADDITIONAL PROVISIONS SUBCONTRACTORS:** Contractor shall affirmatively bind by contract any of its Subcontractors or service vendors (hereinafter "Contractor's Subcontractor") providing services under this Agreement to conform to the provisions of this Exhibit E. Contractor's Subcontractor shall then provide the signed contract to the Contractor, who shall provide it to Caltrans' Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor's Subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor's Subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor's Subcontractor shall immediately notify the Contractor in writing, Contractor will then immediately notify the Caltrans Contract Manager in writing.

**D. OWNERSHIP OF DATA:**

- 1) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates, produced as part of this Agreement will automatically be vested in Caltrans and no further agreement will be necessary to transfer ownership to Caltrans. The Consultant shall furnish Caltrans all necessary copies of data needed to complete the review and approval process.
- 2) It is understood and agreed that all calculations, drawings, and specifications, whether in hard copy of machine-readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- 3) The Consultant is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by Caltrans of the machine readable information and data provided by the Consultant under this Agreement; further, the Consultant is not liable for claims, liabilities or losses arising out of, or connected with, any use by Caltrans of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Consultant.
- 4) Any sub-agreement in excess of twenty-five thousand (\$25,000.00) dollars, entered, into as a result of this Agreement, shall contain all of the provisions of this clause.
- 5) Small Business Firms and Nonprofit Organizations Patent Rights.

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**Consulting Services Agreement (State)**

**E. PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS):**

**1) ALLOCATION OF PRINCIPAL RIGHTS:**

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and [35 U.S.C. 203](#). With respect to any subject invention in which the Contractor retains title, Caltrans shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

**2) INVENTION DISCLOSURE, ELECTION OF TITLE AND FILING OF PATENT APPLICATION BY CONTRACTOR:**

- a) The Contractor will disclose each subject Invention to the Caltrans Contract Manager within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the Invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure, the Contractor will promptly notify the Caltrans Contract Manager of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
- b) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Caltrans Contract Manager within two years of disclosure. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened to a date that is no more than sixty (60) days prior to the end of the statutory period.
- c) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- d) Requests for extension of the time for disclosure, election, and filing under subparagraphs (a), (b), and (c) may, at the discretion of Caltrans, be granted.

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- 3) **CONDITIONS WHEN THE GOVERNMENT MAY OBTAIN TITLE:** The Contractor will convey to the Caltrans Contract Manager, upon written request, title to any [subject invention](#) -
- a) If the Contractor fails to disclose or elect title to the [subject invention](#) within the times specified in (2), above, or elects not to retain title; provided that the agency may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or elect within the specified times.
  - b) In those countries in which the Contractor fails to file [patent applications](#) within the times specified in (2) above; provided, however, that if the Contractor has filed a [patent application](#) in a country after the times specified in (2) above, but prior to its receipt of the written request the Contractor shall continue to retain title in that country.
  - c) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a [subject invention](#).
- 4) **MINIMUM RIGHTS TO CONTRACTOR AND PROTECTION OF THE CONTRACTOR RIGHT TO FILE:**
- a) The Contractor will retain a nonexclusive royalty-free license throughout the world in each [subject invention](#) to which the Government obtains title, except if the Contractor fails to disclose the [Invention](#) within the times specified in (2), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of Caltrans except when transferred to the successor of that party of the Contractor's business to which the [invention](#) pertains.
  - b) The Contractor's domestic license may be revoked or modified by Caltrans to the extent necessary to achieve expeditious [practical application](#) of the [subject invention](#) pursuant to an application for an exclusive license submitted in accordance with applicable provisions at [37 CFR part 404](#) and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved [practical application](#) and continues to make the benefits of the [invention](#) reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of Caltrans to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve [practical application](#) in that foreign country.
  - c) Before revocation or modification of the license, Caltrans will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty (30) days (or such other time as may be authorized by Caltrans for good cause shown by the Contractor) after the notice to show cause why the license

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should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**5) CONTRACTOR ACTION TO PROTECT THE GOVERNMENT'S INTEREST:**

- a) The Contractor agrees to execute or to have executed and promptly deliver to the Caltrans Contract Manager all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Caltrans Contract Manager when requested under paragraph (3) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- b) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (2), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (2)(a), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- c) The Contractor will notify the Caltrans Contract Manager of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
- d) The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by Caltrans. The Government has certain rights in the invention."

**6) SUBCONTRACTS:**

- 1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.



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- 2) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).
- 3) In the case of subcontracts, at any tier, when the prime award with Caltrans is a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor, Caltrans with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (9) of this clause.

**7) REPORTING ON UTILIZATION OF SUBJECT INVENTIONS:**

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (9) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

**8) PREFERENCE FOR UNITED STATES INDUSTRY:**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by Caltrans upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**9) MARCH-IN RIGHTS:**

The Contractor agrees that with respect to any subject Invention in which it has acquired title, Caltrans may require the Contractor, an assignee or exclusive licensee of a subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request Caltrans has the right to grant such a license itself if Caltrans determines that:



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- a) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- c) Such action is necessary to meet requirements for public use specified by State regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- d) Such action is necessary because the agreement required by paragraph (8) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject Invention in the United States is in breach of such agreement.

**10) SPECIAL PROVISIONS FOR CONTRACTS WITH NONPROFIT ORGANIZATIONS:**

If the Contractor is a nonprofit organization, it agrees that:

- a) Rights to a subject invention in the United States may not be assigned without the approval of Caltrans, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- b) The Contractor will share royalties collected on a subject invention with the inventor, including State employee co-inventors when Caltrans it appropriate.
- c) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- d) It will make efforts that are reasonable under the circumstances to attract licensees of subject Invention that are small business firms and that it will give a preference to a small business firm when licensing a subject Invention if the Contractor determines that the small business firm has a plan or proposal for marketing the Invention which, if executed, is equally as likely to bring the Invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (10)(d).

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**4. Prohibition of Delinquent Taxpayers**

Public Contract Code Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the California Department of Tax and Fee Administration or the Franchise Tax Board pursuant to Revenue Taxation Code Sections 7063 and 19195, respectively, of the 500 largest tax delinquencies. Public Contract Code Section 10295.4 provides no exceptions to these prohibitions.

**CALTRANS INTELLECTUAL PROPERTY (IP) COPYRIGHT ASSIGNMENT AGREEMENT FORM**

RSM-0005 (NEW 11/2018)

**INSTRUCTIONS:** This form is to be used for documenting copyrightable works owned by Caltrans from a contractor and/or consultant. You can obtain additional information by visiting the Caltrans IP website at: <https://ip.onramp.dot.ca.gov/>. If you need assistance filling out this form, contact your manager/supervisor.

**THIS AGREEMENT** is dated \_\_\_\_\_, 20\_\_\_, and made by and between the California Department of Transportation (Caltrans) and \_\_\_\_\_, Assignor.

(Assignor name and address)

**RECITALS:**

- (A) Whereas the Assignor is the author of certain copyrightable Works (the "Work"), created in performance of Assignor's Work under Contract No. \_\_\_\_\_, and intends by this Assignment to transfer, convey, and irrevocably assign to Caltrans all of Assignor's Copyright ownership rights, title, and interests, in the Work, including but not limited to, Assignor's entire and exclusive Copyrights under federal and state copyrights laws, in the United States and all jurisdictions outside the United States, including any renewals or extensions associated in the Work pursuant to the terms and conditions set forth below; and
- (B) Assignor for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to the following terms and conditions set forth below in assigning and transferring to Caltrans the proprietary ownership rights, interest, title and entire and exclusive Copyrights in the Work, which is more specifically described herein.

**NOW IT IS AGREED AS FOLLOWS:**

1. Assignor hereby assigns, transfers, conveys, and irrevocably assigns to Caltrans all of Assignor's Copyright ownership rights, title, and interest in the Work, including but not limited to, Assignor's rights in: (1) Assignor's entire and exclusive Copyrights under federal and state copyright laws, in the United States and all jurisdictions outside the United States; (2) Assignor's entire and exclusive common law Copyrights; (3) any and all other privileges and rights in the Work attributed to a copyright owner; and (4) all other intellectual property rights, including but not limited to, Assignor's full-term, renewal-term and extensions associated and subsisting in the copyrightable Work. A correct copy (or description) of the Work, as described under Contract No. \_\_\_\_\_ is attached as Exhibit "A" and is hereby incorporated by reference and made part of this Assignment. Caltrans shall be the sole and exclusive copyright owner of Assignor's Copyright ownership rights in the Work from the effective date forward. Assignee shall have the sole and exclusive right to secure registration of the Copyrights in the Work internationally. No Copyright ownership rights in the Work and/or Copyrights in the Work, shall be retained by Assignor, nor shall there be any reversion of those rights to Assignor in the future.
2. The rights assigned by this Assignment include, but are not limited to, rights to any and all versions of the Work, including the right to copy or reproduce the Work, the right to distribute the Work, the right to display the Work publicly, the right to create derivative works, the right to renew or extend the copyright in the Work to the extent permitted by law, and the right to bring suit or make any claim in Caltrans name for prior or future infringement of rights in the Work.
3. Assignor hereby warrants and represents that: (1) the Work is an original work of authorship of Assignor; (2) Assignor as creative originator is the sole proprietor of the Work; (3) the Work does not infringe any existing Copyrights; (4) Assignor has not entered into any assignments, transfers, licenses, contracts, or mutual understandings in conflict with the terms and conditions of this assignment and transfer of Copyrights and Copyright ownership; and (5) there are no claims currently pending or threatened, nor does Caltrans have any reason to believe that any claims will be brought or threatened in the future, against Caltrans' right, title, or interest in the Work.
4. **Covenant to Cooperate by Assignor:** Assignor does hereby covenant and agrees to cooperate with Caltrans whereby, Caltrans may enjoy to the fullest extent the exclusive Copyright ownership right, title, and interest herein conveyed. Such cooperation shall include: (1) prompt execution of all papers (prepared at the expense of Caltrans) which are deemed necessary or desirable by Caltrans to perfect its the right, title, and interest herein conveyed; and (2) prompt execution of all petitions, oaths, specifications, declarations, or other papers (prepared at the expense of Caltrans) which are deemed necessary by Caltrans for obtaining copyright registration with the United States Copyright Office covering said Work.
5. **Indemnification:** Assignor agrees to indemnify, defend and hold harmless Caltrans, its officers, agents, and employees from any and all third party claims, lawsuits, legal actions, costs (including without limitation to reasonable attorneys' fees), and losses arising in any way as a result of a violation of this Assignment or acts or omissions of Assignor or any of Assignor's affiliates, agents, subcontractors, employees, or representatives, including but not limited to, any copyright infringement claims, property claims, breach of contract claims, or damage claims. Such defense and payment will be conditioned upon the following:
  - a. Caltrans will notify Assignor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - b. Assignor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the California Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**CALTRANS INTELLECTUAL PROPERTY (IP) COPYRIGHT ASSIGNMENT AGREEMENT FORM**

RSM-0005 (NEW 11/2018)

6. **Release and Discharge:** Assignor releases and discharges Caltrans from any and all claims and demands arising out of, or in connection with, any use of the Work, including but not limited to, any and all claims of libel, moral rights, invasion of privacy, and/or any claims under the Visual Artists Rights Act and the California Artists Preservation Act. Assignor realizes that he or she cannot withdraw their consent after executing this Assignment, and acknowledges that this Assignment is binding on Assignor and his or her heirs, legal representatives, and other assigns.
7. **Severability:** The parties hereto agree that if any provision of this Assignment is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Assignment 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.
8. **Waiver of Rights:** Any action or inaction by Caltrans or the failure of Caltrans on any occasion, to enforce any right or provision of this Assignment shall not be construed to be a waiver by Caltrans of its rights hereunder and shall not prevent Caltrans from enforcing such provision or right on any future occasion. The rights and remedies of Caltrans hereunder are cumulative and are in addition to any other rights or remedies that Caltrans may have in law or equity.
9. **No License:** No license, either express or implied, is granted hereby to Assignor, with respect to the Work. Assignor agrees that the Work is and will remain the sole property of Caltrans.
10. **Entire Assignment; Duplicate Originals:** This Assignment constitutes the entire agreement with respect to the Work described in Exhibit "A" of the contract and supersedes all prior or contemporaneous oral or written agreements concerning the Work. This Assignment may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Assignment.
11. **Modification by Subsequent Agreement:** This Assignment may be modified by subsequent agreement of the parties only by an instrument in writing signed by the assignor and Caltrans.
12. **Applicable Law:** This Assignment shall be governed by and shall be interpreted in accordance with the laws of the State of California, and venue for any action to enforce the terms of this Assignment will be in Sacramento County, California.
13. **Declaratory Relief:** Assignor acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Assignment. Accordingly, in addition to any other rights and remedies it may have, Caltrans shall be entitled to obtain declaratory relief from a court of competent jurisdiction preventing or restricting the use of the Work by Assignor, or any other breach of this Assignment.
14. **Delivery:** Assignor must provide Caltrans with this Assignment, properly executed, signed, dated, and notarized and attach the required Exhibit A, necessary to give effect to this Assignment. Assignor shall provide to Caltrans the "original wet signature" of this Assignment. Assignor will receive a copy of the fully executed Assignment.
15. **Copyright Designation:** All displays or publications of the Work shall bear Caltrans' copyright designation notice as suggested by the U.S. Copyright Office.
16. **Term:** The Copyrights protection term of this irrevocable and exclusive assignment shall be for the full term of the copyrighted work, including its renewal term and any applicable extended renewal term of the Copyrights' protection. The terms, covenants, and provisions of this Assignment shall inure to the benefit of Caltrans, its officers, successors, assigns, and/or other legal representatives, and shall be binding upon said Assignor.

**Recipient:**

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date Signed \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Caltrans:**

Authorized Representative Signature \_\_\_\_\_  
 Authorized Representative Name \_\_\_\_\_  
 Authorized Representative Title \_\_\_\_\_  
 Date Signed \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**CALTRANS INTELLECTUAL PROPERTY (IP) NONDISCLOSURE AGREEMENT FORM**

RSM-0004 (NEW 11/2018)

**INSTRUCTIONS:** This form is to be used for documenting IP nondisclosure agreements between Caltrans and Contractor(s)/Consultant(s). You can obtain additional information by visiting the Caltrans IP website at: <https://ip.onramp.dot.ca.gov/>. If you need assistance filling out this form, contact your manager/supervisor.

**THIS AGREEMENT** is dated \_\_\_\_\_, 20\_\_\_, and made by and between the California Department of Transportation (Caltrans) and

(Recipient name and address)

**RECITALS:**

- (A) Caltrans possesses Confidential Information that is nonpublic, confidential, and proprietary, which Caltrans is willing to disclose to Recipient on the terms and conditions set forth below; and
- (B) Recipient, for valuable consideration the sufficiency of which is hereby acknowledged, agrees to the following terms and conditions in accepting the Confidential Information, and to use the Confidential Information solely for the purpose of: \_\_\_\_\_ (“the Permitted Purpose”).

**NOW IT IS AGREED AS FOLLOWS:**

1. **“Confidential Information”** means any and all nonpublic information relating to the current and future operations and services of Caltrans, including but not limited to, planning, specifications, concepts, technical information, techniques, drawings, sketches, models, know-how, data, databases, electronic information, emails, processes, designs, photographs, apparatus, equipment, specifications, software programs, source code, software documentation, manuals, and formulae. The parties further agree that Confidential Information shall also include information received by Recipient prior to the execution of this Agreement and that would otherwise qualify as Confidential Information as provided herein. Confidential Information does not include information that:
  - a. Is lawfully within the public domain other than through disclosure or default by the Recipient;
  - b. Was lawfully obtained from a third party who was legally in possession of the information, and who is authorized in writing by Caltrans to disclose it;
  - c. Was independently developed by Recipient without the use of the Confidential Information, or any derivative works, and without the use of knowledge learned from accessing the Confidential Information; or
  - d. Is subject to the requirements of the California Public Records Act (“CPRA”) or otherwise required to be disclosed by order of a court, administrative agency, or other governmental body with competent jurisdiction provided that Recipient notifies Caltrans within three (3) business days of receipt of such an order so that Caltrans may, in its sole discretion, seek a protective order from a court of competent jurisdiction preventing or restricting disclosure. Recipient will not oppose any action instituted by Caltrans but will instead cooperate with Caltrans to obtain an appropriate protective order.
  - e. Was ordered to be publicly released by court order or by the lawful order of a governmental agency.
2. **Recipient undertakes for a period of five (5) years from the date of this Agreement:**
  - a. To protect the secrecy of all Confidential Information that it may acquire in any manner by, at a minimum, implementing reasonable, industry-standard controls to maintain its confidentiality and to prevent unauthorized disclosures;
  - b. To prevent the Confidential Information from falling into the public domain or into the possession of unauthorized individuals or entities;
  - c. To use the Confidential Information exclusively for the Permitted Purpose, unless Recipient first obtains the written consent of Caltrans;
  - d. Not to disclose such Confidential Information whether verbally or in writing, except to authorized representatives of Recipient who needs to have access to the Confidential Information in order to effectuate the Permitted Purpose;
  - e. To inform any third party to whom Recipient discloses Confidential Information that it is confidential, and obtains their written agreement to keep it confidential on the same terms as this Agreement;
  - f. To return Confidential Information immediately upon Caltrans’ request or when no longer required for the purposes of this Agreement, or to destroy all copies of the Confidential Information maintained in hard copy, electronic media, or in any other form whatsoever, as requested by Caltrans; and
  - g. To notify Caltrans immediately upon learning of any unauthorized disclosure by someone or some entity to which the Recipient has disclosed the Confidential Information, and to cooperate with Caltrans in enforcing Caltrans’ legal right to protect the Confidential Information.

**CALTRANS INTELLECTUAL PROPERTY (IP) NONDISCLOSURE AGREEMENT FORM**

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3. **Indemnification:** Recipient agrees to indemnify, defend, and hold harmless Caltrans, its officers, agents, and employees from any and all third party claims, costs (including but without limitation reasonable attorneys' fees and costs), and losses arising in any way as a result of a violation of this Agreement or acts or omissions of Recipient or any of Recipient's affiliates, agents, subcontractors, employees, or representatives. Such defense and payment will be conditioned upon the following:
  - a. Caltrans will notify Recipient of any such claim in writing and tender the defense thereof within a reasonable time; and
  - b. Recipient will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, Caltrans will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
4. **Severability:** The parties hereto agree that if any provision of this Agreement is found to be illegal or unenforceable, such term or provision shall be deemed stricken, and the remainder of the Agreement 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. **Assignment:** This Agreement shall not be assignable by the Recipient in whole or in part without the written consent of Caltrans. In the event Caltrans approves an assignment in writing, Recipient remains jointly and severally liable for the obligations set forth in this Agreement.
6. **Waiver of Rights:** Any action or inaction by Caltrans or the failure of Caltrans on any occasion, to enforce any right or provision of this Agreement shall not be construed to be a waiver by Caltrans of its rights hereunder and shall not prevent Caltrans from enforcing such provision or right on any future occasion. The rights and remedies of Caltrans hereunder are cumulative and are in addition to any other rights or remedies that Caltrans may have in law or equity.
7. **Survival:** This Agreement shall govern all communications between the parties. Recipient understands that its obligations under Paragraph 2 shall survive the termination of any relationship between Recipient and Caltrans. Upon termination of any relationship between the Parties, Recipient will promptly deliver to Caltrans all documents and other materials furnished to Recipient by Caltrans and will certify in writing that any remaining Confidential Information of Caltrans or derivative works thereof have been destroyed and removed from the possession of Recipient. Notwithstanding the foregoing, the Recipient shall be entitled to retain in its legal department a confidential file containing one (1) archival copy of all such information strictly for purposes of monitoring of its ongoing obligations under this Agreement and its compliance therewith.
8. **No License:** No license, either express or implied, is granted hereby to Recipient, with respect to the Confidential Information other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. Recipient agrees that Confidential Information is and will remain the sole proprietary property of Caltrans.
9. **No Intellectual Property Rights in Confidential Information:** Recipient will not apply for or obtain any intellectual property protection in any of the Confidential Information or related derivative works. All intellectual property rights to any and all materials created, developed, and/or derived from the use of the Confidential Information shall be and remain the sole intellectual property of Caltrans, and Recipient hereby agrees to automatically transfer and assign to Caltrans any and all rights in any derivative works, created, developed or derived from the use of the Confidential Information.
10. **No Liability or Warranties:** In no event shall Caltrans be liable for any damages arising from or related to this Agreement. Caltrans expressly disclaims any and all warranties, express or implied, including without limitation any implied warranty of merchantability, fitness for a particular purpose and non-infringement of third-party rights. Permission to use the Confidential Information is granted "AS IS." No warranty is made that the use of the Confidential Information will be uninterrupted, or that any errors or defects in the Confidential Information will be corrected. No warranty is made regarding the results of use of the Confidential Information. Requester assumes all responsibility for investigating and avoiding any possible infringement of copyright laws or reproduction rights, and any and all other third party intellectual property rights, that may arise from the reproduction or publication of the Confidential Information and/or derivative works.
11. **Entire Agreement; Duplicate Originals:** This Agreement constitutes the entire agreement between both parties pertaining to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements or transactions concerning such Confidential Information. This agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.
12. **Modification by Subsequent Agreement:** The terms of this Agreement may only be modified by a written subsequent agreement dully signed by both parties hereto. Variance from the terms and conditions of this Agreement by Recipient or other written notification will be of no effect.

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- 13. **Applicable Law:** This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of California, and venue for any action to enforce the terms of this Agreement will be in Sacramento County, California.
  
- 14. **Declaratory Relief:** Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, in addition to any other rights and remedies it may have, Caltrans shall be entitled to obtain declaratory relief from a court of competent jurisdiction preventing or restricting the disclosure or use of the Confidential Information, or any other breach of this Agreement.

**Recipient:**

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date Signed \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Caltrans:**

Authorized Representative Signature \_\_\_\_\_  
 Authorized Representative Name \_\_\_\_\_  
 Authorized Representative Title \_\_\_\_\_  
 Date Signed \_\_\_\_ / \_\_\_\_ / \_\_\_\_