



Patrick W. Henning
Director

January 7, 2009



Arnold Schwarzenegger
Governor

TO PROSPECTIVE BIDDERS

SUBJECT: REQUEST FOR PROPOSAL (RFP) - No. 44420
Service: Marketing Services
Term: 4/1/2009 through 3/31/2010

The State of California, Employment Training Panel (ETP), invites you to submit a proposal to market its program to targeted industries. This Request for Proposal (RFP) is being processed by the Employment Development Department (EDD).

Contracts will be awarded on the competitiveness of the proposals. Therefore, proposals must be carefully and correctly prepared in accordance with the RFP specifications and requirements.

Bidders wishing to respond to this RFP must submit the required copies of proposal packages, complying with the instructions given in this RFP. Any additions or modifications to the proposal package may result in the rejection of the proposal. ETP reserves the right to reject any or all of the proposals.

Proposals must be received and date stamped by the EDD Contract Services Group no later than **February 9, 2009, 3:00 p.m.** Pacific Standard Time.

To ensure fair and equal competition, all questions regarding this RFP must be asked in writing and must be received no later than **January 22, 2009 at 2:30 p.m.** Pacific Standard Time. Questions not submitted in writing by the deadline, shall be deemed waived and may not be raised at a later time. Please see Rules and Conditions of this RFP for further details.

Any questions regarding this proposal may be directed to the undersigned at (916) 653-0774.

A handwritten signature in black ink, appearing to read "Sheri L. Collins".

SHERI L. COLLINS
Contract Analyst, EDD

cc Kim Smith, MIC 64
ETP



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SECTION 1 – OVERVIEW

A. Introduction

The State of California Employment Training Panel (ETP or Panel) announces this Request for Proposal (RFP) to market the ETP program to targeted priority industries and special populations throughout California in accordance with each of the terms and conditions in this RFP.

Consistent with its Strategic Plan, ETP develops performance-based contracts through an RFP process to market the ETP program to strategic economic development partners such as Local Workforce Investment Boards (LWIBs).

The submission of a proposal in response to this RFP creates neither a contract nor a commitment of any kind. ETP is not obligated to award a contract as a result of this RFP and assumes no liability for costs incurred in the submission of any proposal or for any costs incurred prior to the execution of a formal contract, hereafter referred to as Agreement.

It is understood and agreed that following the award of the Agreement, the successful bidders shall agree to comply with this RFP and all Exhibits attached herein; and provide the required documents requested in order for ETP to complete the execution of a Standard Agreement (STD. 213).

B. Employment Training Panel (ETP)

ETP is a State of California agency that typically approves over \$90 million in training contracts for California companies for worker training purposes in an effort to foster the creation and retention of quality jobs in California. Training funds may be disbursed to many employers through a single entity such as a trade association or Workforce Investment Board under a Multiple Employer Contract (MEC).

ETP assists eligible companies in developing training proposals for presentation to its governing board, an eight-member Panel, for consideration. The Panel currently consists of business and labor representatives, and a representative from the State Business Transportation and Housing Agency. The Panel recently completed its Strategic Plan for 2008/09, which targets certain industries as funding priorities.

For more information about ETP visit the Internet site at www.etp.ca.gov. A copy of the Strategic Plan is available upon request; the 2008/2009 Strategic Plan may be viewed as a link from that site.

C. Purpose

The primary goal of this RFP is to increase outreach to ETP's priority and target industries identified in the Strategic Plan. ETP will award a first year marketing contract, with options to renew for a second year. The contract with the successful bidder will be

reviewed every six months to evaluate success in meeting performance goals. ETP reserves the right to terminate the contract that is not meeting performance goals.

This RFP seeks bidders as described in Subsection "D" below. The successful bidder will be those organizations that demonstrate the ability, on a cost-effective basis, to bring in job training applications from ETP-eligible entities that are subsequently approved as final agreements by ETP. In order to support ETP's funding priorities, during the term of the contract, the successful bidders may be requested to direct marketing efforts toward industries or geographical regions from which ETP seeks additional projects.

Bidders under this RFP will be asked to explain how they will market the ETP program to the specified target group. They will also be asked to propose the number of applications they will submit, the number of organizations to which they will provide technical assistance, and the budget detail will indicate the unit/total cost for each. The successful bidder will receive "baseline" compensation, and additional compensation for each approved multiple-employer contract with LWIBs that have not contracted with ETP in the last five years. This additional compensation shall be limited to no more than six (6) approved contracts and shall not exceed a total of \$15,000.

D. Award Types and Amounts

Projects shall begin as soon as April 2009, or when the contract is approved and signed, and must end by March 31, 2010.

Under this RFP, ETP will select one successful bidder to provide the services below:

Up to \$120,000 in "baseline" compensation for the successful bidder to market the ETP program to LWIBs, leading to the Panel's approval of a proposal to fund training under a Multiple Employer Contracts (MEC). Also, to deliver technical assistance to LWIBs and One-Stop Career Centers relating to the development and administration of the resulting MECs. Project activities of bidder will also lead to the Panel's approval of direct contracts between ETP and LWIBs. The successful bidder will receive additional compensation for each approved MEC with a LWIB that has not contracted with ETP in the last five years. This additional compensation shall be limited to no more than six (6) approved contracts and shall not exceed a total of \$15,000.

E. Option to Amend

The ETP may exercise the option to amend any resulting contract, by adding funds or by extending the term for an additional year based on successful performance of the contractor if sufficient funds are made available by the State Budget Act of the appropriate State Fiscal Year.

SECTION 2 – KEY ACTION DATES

<i>DATE</i>	<i>EVENT</i>
January 8, 2009	Release of Request for Proposal
January 22, 2009, 2:30 p.m.	Due Date to Receive Written Questions
January 27, 2009	Question and Answer Summary Mailed on or Near
February 9, 2009, 3:00 p.m.	Proposal Due Date
February 11 - 17, 2009	Evaluation Team Review Proposals
February 23 - 27, 2009	Post Notice of Proposed Award
March 2, 2009	Award Contract
April 2009	Contract Execution and Start of Contract

SECTION 3 – RULES AND CONDITIONS

A. General Information

The competitive bidding process being used for this procurement of services is known as the RFP Primary Method. All proposals submitted in response to this RFP will be reviewed for compliance with SECTION 4, MANDATORY PROPOSAL REQUIREMENTS. Each bidder must establish, in writing, the ability to meet each stated requirement. Those proposals that meet these requirements will be evaluated according to the criteria in SECTION 5, PROPOSAL EVALUATION PROCESS. The Selection Committee will evaluate and score all proposals, passing the Pre-Qualification Evaluation, utilizing the Scoring Criteria identified in the RFP.

Only those proposals that receive a score of at least the minimum requirement identified on the Scoring Sheet will be considered for the Cost Proposal opening.

The use of subcontractor(s) is subject to approval by ETP. Therefore, not all work recommended by the bidder will necessarily be approved, and not all subcontractors listed in the proposal will necessarily be selected. The bidder must make it clear to any subcontractor included in the proposal that even if the bidder is selected, the subcontractors may not be selected.

Bidders should carefully review the requirements of this RFP, which includes a complete explanation of the needs that must be met, and instructions which prescribe the format of proposals as outlined in SECTION 4, MANDATORY PROPOSAL REQUIREMENTS.

Addenda

ETP reserves the right to amend, alter, or change the rules and conditions contained in this RFP prior to the deadline for submission of bids/proposals. Addenda will only be sent to those bidders who submitted bids/proposals before the deadline date.

Bidder's Cost

Costs for developing proposals are entirely the responsibility of the bidder and shall not be reimbursed by the State of California.

B. Written Questions

All questions, suggestions, or objections regarding the content of this RFP, including but not limited to, the SECTION 4, MANDATORY PROPOSAL REQUIREMENTS AND SECTION 5, PROPOSAL EVALUATION PROCESS, may be submitted by mail, e-mail, or fax, and must be received by **January 22, 2009, no later than 2:30 p.m.**, regardless of postmark. If questions are faxed, the time and date on the fax must not exceed the due date and time.

Questions not submitted in writing by the deadline shall be deemed waived and may not be raised at a later time.

Questions may be submitted by fax to the attention of Sheri Collins at (916) 657-4391 or (916) 319-1521; email to scollins@edd.ca.gov or in writing to:

Employment Development Department
Contract Services Group
800 Capitol Mall, MIC 62-C
Sacramento, CA 95814
Attention: Sheri L. Collins

An addendum, including a summary of questions and answers, will be mailed to all bidders on or **before January 27, 2009.**

C. Delivery of Proposals

Proposals are to be delivered as follows:

Proposals are to be delivered in **two separate parts**: A sealed technical proposal and a separate sealed cost proposal. Deliver one (1) original and four (4) typed copies of the technical proposal (do not include any costs) in a sealed envelope clearly marked "**RFP 44420 TECHNICAL PROPOSAL**", and (1) original of the cost proposal and required forms (See Section 4, Minimum Proposal Requirements) in a separate, sealed envelope, enclosed and labeled "**COST PROPOSAL**".

The proposal package must be received and time stamped by the Contract Services Group no later than **3:00 p.m. Pacific Time on Monday, February 9, 2009.** Proposals may not be faxed.

An **ORIGINAL SIGNATURE** in ink, of an official authorized to bind the bidder is required on ALL documents requiring a signature in the original of each proposal. Those proposals should be clearly marked "Original Signature Copy." Photocopied signature pages should be clearly marked "Copy." Signature stamps are not acceptable.

The exterior of the envelope is to be clearly marked with the following information:

REQUEST FOR PROPOSAL NO. 44420
DO NOT OPEN IN MAIL ROOM
PROPOSAL DUE DATE: February 9, 2009
3:00 P.M. PACIFIC TIME

Any proposal received after the specified date and time will be disqualified and returned to the sender unopened. Signed copies of the sealed proposal package are to be mailed or delivered to:

Regular mail:

Employment Development Department
Contract Services Group, MIC 62-C
P.O. Box 826880
Sacramento, CA 94280-0001

Overnight and/or Express delivery:

Employment Development Department
Mail Services
800 Capitol Mall, Room 2029
Sacramento, CA 95814
Attn: Contract Services Group, MIC 62-C

Hand delivery:

Employment Development Department
722 Capitol Mall, Room 1100
Sacramento, CA 95814
Attn: Sheri L. Collins, Contract Services Group

D. Antitrust Claims

1. In submitting a bid to a public purchasing body, successful bidders offer and agree to assign ETP 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. Section 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 bidder/proposer for sale to the purchasing body pursuant to the bid. 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 ETP receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the ETP 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 by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery (See Government Code Section 4553).
3. Upon demand in writing by ETP, the bidder 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).

E. Definitions and Terms

1. ETP has established certain requirements with respect to bids to be submitted by prospective Contractors. The use of "shall", "must", or "will" (except to indicate future tense) in the RFP indicates a requirement or condition from which a deviation, if not material, may be waived by EDD.
2. The words "should" or "may" in the RFP indicate desirable attributes of conditions, but are non-mandatory in nature. Deviation from, or omission of, such a desirable feature, even if material will not in itself cause rejection of the proposal.
3. The use of the terms ETP refers to the Employment Training Panel and EDD refers to the Employment Development Department, unless indicated otherwise.
4. The use of the terms "proposer(s)" and "bidder(s)" refers to entities responding to this RFP.

F. Grounds for Rejection

ETP reserves the right to waive any immaterial deviation in a proposal; however, the waiver of an immaterial deviation in a proposal shall in no way modify the document or excuse the proposer from full compliance with the proposal requirements after the bidder is awarded the contract.

A proposal shall be rejected if:

1. The proposal is received at any time after the exact time and date set for receipt of proposals.
2. The proposal is not completed in ink or typewritten.
3. The Cover Sheet (Attachment 1) is unsigned.
4. The proposal does not meet the requirements of SECTION 3, RULES AND CONDITIONS.
5. The proposal is not prepared as required in SECTION 4, MANDATORY PROPOSAL REQUIREMENTS.
6. The bidder has been decertified from contracting with ETP by the Department of Fair Employment and Housing.
7. The bidder has received substantive negative contract evaluation from the State of California.

8. The proposal contains false or misleading statements or references which do not support an attribute or condition contended by the bidder, if in the opinion of ETP such statements or references were intended to erroneously mislead ETP in its evaluation of the proposal.
9. The proposal is conditional or incomplete, or contains any alterations of form or other irregularities of any kind. ETP may reject any or all proposals and may waive any immaterial deviation in a proposal. ETP's waiver of immaterial deviation shall in no way modify the RFP document or excuse the bidder from full compliance with all requirements, if awarded the agreement.
10. The bidder has had a contract with the State of California canceled due to failure to comply with the Drug-Free Workplace Act of 1990.
11. The bidder is not responsible (i.e., has not paid taxes; has no business license; has submitted a bid when license is subject to suspension on the date of the bid opening and/or award of the contract, or during the proposed term of the agreement; submitted a bid without an authorized signature; falsified any information in the proposal package; or has provided poor performance on a previous contract with ETP.).

G. Notice of Intent to Award/Protest Procedures

1. Contracts shall be awarded to bidders meeting SECTION 3 – RULES AND CONDITIONS, SECTION 4 – MANDATORY PROPOSAL REQUIREMENTS; SECTION 5 – PROPOSAL EVALUATION PROCESS; SECTION 6 – PERFORMANCE AND DELIVERABLES; and based on the evaluation criteria as outlined in SECTION 8 – EVALUATION CRITERIA. ETP reserves the right not to award a contract.
2. Upon selection of a proposed contract, a Notice of Intent to Award will be posted for five (5) working days (starting the day after posting) at ETP, 1100 J Street, 4th Floor, Sacramento CA 95814.
3. If a bidder chooses to protest the Notice of Intent to Award:
 - a. Protests must be filed with ETP and the Department of General Services (DGS), Office of Legal Services (OLS), Attention Protest Coordinator, 707 Third Street, 7th Floor, West Sacramento, CA 95605 FAX: (916) 376-5088 within five (5) working days of the date on the Notice to Intent to Award was posted; and,
 - b. A written statement outlining the grounds for the protest (Public Contract Code 10343 and 10376) must be filed within five (5) working days of protest filing. The contract may not be awarded until all protests are withdrawn or DGS has rendered a decision.
 - c. The DGS/OLS assigns an attorney to review the protest to determine whether DGS has jurisdiction.

- d. OLS sends a protesting bidder an acknowledgment letter within 24 hours of receiving the protest and notifies ETP of the receipt of the protest. The letter either:
 - Notifies the protesting bidder of the five (5) working-day limit for filing the required written statement concerning all the grounds of the protest; or,
 - Informs the protesting bidder that DGS has no jurisdiction over the protest.
 - e. OLS requests information from ETP about the intended award. If ETP is aware of some reason that the protest should not go forward this information would be communicated to OLS at this time.
4. If no protests are filed within five (5) working days of the date of the Notice of Intent to Award, the contracts shall be awarded to the proposed bidders. Final awards are the dates the contracts are signed by DGS.

H. Debriefings

Written debriefings of the evaluation results will not be provided to unsuccessful bidders. Oral debriefings may be provided at ETP's discretion.

I. Disposition of Proposals

1. All materials submitted in response to this RFP will become the property of the ETP/EDD, and as such, are subject to the Public Records Act (Government Code, Section 6250, et seq.). ETP and EDD will disregard any language purporting to render all or portions of any proposal confidential.
2. After proposals are evaluated and the notices of intent to award have been posted, all proposals shall be available for public inspection. However, the contents of all proposals, draft RFP's, 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 award is made. ETP and EDD shall hold the content of all working papers and discussions relating to a proposal confidential indefinitely, unless the public's interest is best served by disclosure because of pertinence to a decision, agreement, or the evaluation of a proposal. A bidder's disclosure of this subject is a basis for rejecting a proposal and ruling the bidder ineligible to participate further in the bidding process.
3. ETP/EDD may return a proposal to a bidder upon written request after **conclusion of** the bid process.

J. State Contract Requirements

This RFP and any resulting contracts shall be subject to all requirements set forth in amended Public Contract Code, Section 6611 (AB 1756 amended PC 6611). DGS may perform contract negotiations relative to contracts for goods, services, and information technology and telecommunications, if it is determined to be in the state's best interest based on meeting the criteria identified within the PCC 6611.

K. California Taxpayer and Shareholder Protection Act of 2003

This RFP and any resulting contract are subject to all requirements as set forth in Part 2 of Division 2 of the Public Contract Code, Section 10286 which includes, but is not limited to, providing written submission of a declaration stating that the supplier is eligible to contract with the State of California pursuant to statutory requirements. Failure of the supplier to comply with and provide information, when requested by the awarding department within the time indicated, will cause the supplier's bid response to be considered non-responsive and their bid will be rejected.

L. Public Contract Code

The bidder is advised of certain duties, obligations, and rights under the Public Contract Code, Article 5, Sections 10335.5 - 10412, with which the bidder should be familiar. A copy of these Public Contract Code sections is attached hereto as Attachment 4.

SECTION 4 – MANDATORY PROPOSAL REQUIREMENTS

These instructions prescribe the proposal format to be used and mandatory content included for the presentation of technical proposal data.

PROPOSALS SHOULD BE PREPARED AND SUBMITTED IN THE FOLLOWING FORMAT TO ENSURE ACCURATE EVALUATION.

FAILURE TO DEMONSTRATE OR EVIDENCE FULFILLMENT OF ALL MANDATORY REQUIREMENTS MAY RESULT IN DISQUALIFICATION (see SECTION 3, RULES AND CONDITIONS).

A. Delivery of Proposal Package

Deliver or mail one (1) original and four (4) typed copies of the TECHNICAL PROPOSAL in a sealed envelope clearly marked "RFP 44420, with a separate sealed envelope marked COST PROPOSAL, no later than **February 9, 2009, 3:00 p.m.** (regardless of the postmark) to EDD, Contract Services Group at the address listed in SECTION 3, RULES AND CONDITIONS, Subsection C).

PER STATE LAW, PROPOSALS CANNOT BE ACCEPTED AFTER THE PUBLISHED TIME AND DATE, AND WILL BE RETURNED UPOPENED.

B. Forms Required

(Complete these forms if applicable and return them with your proposal.)

1. Payee Data Record

The State Revenue and Taxation Code, Section 18646 requires State agencies to file information tax returns (Form 1099) for certain types of payments made to vendors. The successful bidder will be required to complete and submit a STD 204, Payee Data Record, which can be found at <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf> to EDD before processing payment for services.

2. Disabled Veterans Business Enterprise (DVBE) Program Participation

DVBE participation for this RFP has been waived.

C. Proposal Format and Document Order

Documents must be completed in ink or typewritten, and signed by an authorized representative of the bidder. Errors must be crossed out and initialed, with corrections printed in ink or typewritten adjacent to the errors. The individuals signing the bid forms must initial all corrections in ink.

The following chart lists the order of documents that must be included in the proposal package. Items which are noted as "optional" are not required, but will earn bidder extra points if included. This chart may also be used as a checklist to help ensure submission of a complete proposal package:

FOR OFFICE USE ONLY – The following list will also serve as the checklist to verify the inclusion of minimum requirements. If any single item receives a negative response, the proposal may be eliminated from further review and considered non-responsive.

Name of Proposer: _____

Name of Reviewer: _____

DATE: _____

MANDATORY REQUIREMENTS
Meets Requirements

	YES	NO
a. Cover Letter		
b. Table of Contents, with information organized as presented here, and this format following (SECTION IV, MANDATORY PROPOSAL REQUIREMENTS, Subsection C) and with corresponding page references.		
c. Description of Organization Services and Activities. Provide description of the nature of the organization's services and activities. Note when the business was established, brief history, and location. List location(s) of the office(s) from which the primary work on this contract will be performed.		
d. Personnel/Management <u>Project Manager.</u> Bidder must identify one (1) individual on the account team who will manage the contract work, and who will be available to ETP for a sufficient amount of time to manage the account. <u>Account Team/Resumes.</u> Bidder must specify the account team and key personnel who will manage/conduct the work. Identify the role each team member will serve, title, where the individual is headquartered and the percentage of the firm's total effort that will be provided by the individual. Key personnel are defined as those people who will exercise a major management and/or administrative role on behalf of the proposer. Current resumes/biographies must be attached for each person. Do not exceed two (2) pages per person. <u>Organization Chart.</u> Bidder may submit an organization chart, showing the hierarchy of key personnel to be working on the project. Chart must show the relationship between project manager and key personnel of the bidder's organization and all other parties (subcontractors) to the proposal.		
e. Proposal Contents, 1. Organization, Experience, and Expertise 2. Scope of Work		

f. Required Forms: 1. STD 204, Payee Data Record, 1 original signature which can be found at: http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf 2. Darfur Contracting Act, Attachment 9, must be completed and returned with proposal. Proposals will be disqualified if this form is not completed and returned. g. Optional required documentation: 1. Target Area Contract Preference Act (TACPA) (STD 830S) (2 points), which can be found at http://www.pd.dgs.ca.gov/edip/default.htm 1 original signature, if applicable 2. Enterprise Zone Preference Request: Economic Zone Act (EZA) (STD 831S) (2 points), which can be found at: http://www.pd.dgs.ca.gov/edip/default.htm 1 original signature, if applicable 3. Local Agency Military Base Recovery Area (LAMBRA) (STD 832), which can be found at http://www.pd.dgs.ca.gov/edip/default.htm 1 original signature, if applicable		
h. Small Business Certification Preference Programs Submit one (1) copy of your Small Business (SB)/Microbusiness certification is applicable Submit one (1) copy of your non-small business claiming a minimum of 25% California Certified Small Business Subcontractor Preference (Page 4 of the Cost Proposal)		
i. Business License Business License or Receipt for Business Tax. Copy of current California business license or receipt for business tax in accordance with the city or county in which the business is located.		

ETP reserves the right to reject all proposals. ETP also reserves the right to amend, alter, or change the rules and conditions contained in this RFP prior to the deadline for submission of proposals. Written instruction(s) regarding the submission of proposals shall take precedence over any verbal instruction(s).

Individuals requiring special accommodations for disabilities are requested to contact Sheri Collins, EDD Contract Analyst at (916) 653-0774.

SECTION 5 – PROPOSAL EVALUATION PROCESS

A. OVERVIEW

This RFP is a competitive process. A committee established by ETP will evaluate the proposals. The committee will examine each proposal for compliance with RFP requirements, and shall first determine whether the bidder meets the minimum proposal requirements. Proposals that do not meet those criteria will be immediately rejected.

The committee will, individually or as a team, review, evaluate, and numerically score proposals based on proposal adequacy, thoroughness, and the degree to which it addresses the RFP requirements. If individual evaluations are conducted, the committee will meet as a whole to establish a consensus score for each evaluated element of each bidder proposal.

The Evaluation Criteria have been developed to determine responsiveness to ETP's needs as described in this RFP, and to assess the skills, knowledge, talents and methods needed to conduct program marketing and prepare the deliverables. Presentations may be requested from potential contractors during final consideration of proposals. ETP reserves the right at any time to reject any or all proposals. All proposals that have met the mandatory proposal requirements will be rated against the criteria listed in Evaluation Criteria.

The Selection Committee will evaluate and score all proposals, passing the Pre-qualification Evaluation, utilizing the Scoring Criteria identified in this RFP.

Only those proposals that receive a score of at least the minimum requirement identified on the Scoring Sheet will be considered for the Cost Proposal opening.

The ETP reserves the right to reject any or all proposals and may waive any immaterial deviation or defect. The ETP's waiver of any immaterial deviation or defect shall in no way modify the solicitation documents or excuse the proposer from full compliance with the solicitation specification if awarded the contract. The ETP is not required to award a contract.

B. GENERAL INFORMATION

ETP is seeking marketing partners with experience and expertise to market its program to California Local Workforce Investment Boards and One-Stop Career Centers as identified in its 2008/2009 Strategic Plan.

ETP is seeking marketing partners who will market to entities that have not previously received ETP funds. Reimbursement will not be provided to marketing partners who bring in applicants that have accessed ETP funds within the previous five (5) years.

ETP is seeking marketing partners who will locate and secure appropriate targeted applicants for funding. These services shall include providing assistance to targeted applicants in the application process, creating program awareness and interest in the appropriate communities. As part of the marketing effort to promote ETP funding, bidder is encouraged to use a variety of communication tools, including website use, promotional meetings, orientation presentations and print media.

All bidders must describe their resources to market ETP, including strategies and quality controls to be used. Sufficient details must be given and must include a demonstrated ability to meet deadlines, and proof of project management experience.

Bidders shall demonstrate ability, or the ability of its intended marketing representatives, to market the ETP program, conduct ETP orientation meetings, and assist applicants through the ETP application process. Bidders shall provide examples of past successful efforts of marketing ETP, or other similar programs, describing how success was measured. Bidders shall demonstrate the ability, or the ability of its intended representatives, to disseminate ETP program information, identify ETP-eligible employers and groups, and encourage eligible entities to apply for ETP job training funds. Other marketing strategies and applicant services are encouraged.

The successful bidders shall not perform any other compensated services for the companies they bring to ETP. Such compensated services include, but are not limited to, training and administration services.

C. PROPOSAL CONTENTS

1. Organization's Experience and Expertise

Bidders will be rated on the length and breadth of applicable experience and expertise relating to the following criteria:

Marketing and technical assistance to LWIBs and One-Stop Career Centers.

Proposals should describe how the proposing organization is a statewide membership organization or partnering with an organization with statewide membership: 1) with a membership that has multiple members, including ETP-eligible employers, 2) that has been in existence a minimum of five years in the State of California, and, 3) can demonstrate sufficient technical knowledge of the ETP program and experience with promotional marketing of services to their membership. The proposal should include a role for ETP in any statewide events or conferences hosted, and specify the role ETP staff will play in those events.

2. Scope of Work

Marketing Plan & Tasks

- a) Proposals must contain marketing plans detailing proposed marketing tasks, based on a start date of April 2009. The objective of the marketing plan is to demonstrate to ETP the methods the bidder intends to use to market the ETP program according to the targets established in this Statement of Work and ETP's Strategic Plan. Under the direction of the Economic Development Director of the Employment Training Panel, the successful bidder will target marketing to LWIBs and One-Stop Centers.
- b) Additional Payments: \$15,000 (\$2,500 per unit) will be available for payment to successful bidder for a maximum of six (6) units (MECs between ETP and LWIB) resulting from the successful bidder's efforts.

Meeting Goals and Objectives

Specifically, the bidder must demonstrate how it anticipates assisting ETP to meet the following goals and objectives from the Strategic Plan:

- a. Promote the importance of training for California employers to LWIBS and One-Stop Career Centers through a variety of marketing activities, including newsletters, email, the internet, workshops, and/or other methods. A minimum of 2 to 3 sessions should be held to provide an overview focused on ETP and WIB contractor best practices.
- b. Hold on-site meetings with LWIB executive staff.
- c. Assist LWIBs in approaching ETP for funds.
- d. Provide technical assistance to LWIBs during the pre-application process, and the application process; and ongoing technical assistance during the term of training agreements.
- e. Assist ETP in meeting its goals as outlined in its Strategic Plan.
- f. Specify what role ETP will be expected to play in any statewide events or conferences hosted, including, but not limited to, exhibit space, if applicable.

3. Budget

Bidders must prepare budgets tied to the tasks performed, including an estimate of travel, communication, and postage/shipping expenses bidder expects to incur during the term of this marketing contract, and any additional reserve funds to be held for marketing contingencies. Funds shall only be used for actual expenses related to marketing ETP to potential applicants and assisting them through the application process.

SECTION 6 – PERFORMANCE AND DELIVERABLES

1. **Training.** Prior to the commencement of any contract work the successful bidder and/or their representatives shall receive training from ETP staff pertaining to the ETP program. The Economic Development Director must verify that the successful bidders and/or their representatives can demonstrate ETP program knowledge and contractor eligibility knowledge before authorizing the successful bidders in each Award Category to commence ETP orientations and/or technical assistance programs. ETP's Economic Development Director may remove this authorization should any successful bidder in any Award Category fail to demonstrate sufficient knowledge of the ETP program.
2. **Marketing.** The successful bidder will coordinate marketing activities with ETP to ensure that it markets toward specific needs identified in each region. A description of the methodology the bidder will use to market the ETP programs and disseminate information to target applicants and entities is required. To prove capability to provide these services, the bidder must describe methods, strategies, and approaches for completing the marketing plan. Sufficient detail must be given, which may include examples of past projects indicating creativity, competency, familiarity with ETP program issues, successes, challenges, activities, and events, reflecting a broad outreach to California's employer population.
3. **Applications.** Although the successful bidder is not required to specify a number of training projects they will produce, to receive the "baseline" compensation for the marketing services rendered under this contract, the successful bidder must assist LWIBs in approaching ETP for funds. The successful bidder will receive additional compensation for each approved multiple-employer contract with LWIBs that have not contracted with ETP in the last five years. This additional compensation shall be limited to no more than six (6) approved contracts and shall not exceed a total of \$15,000.
4. **Reports.** Monthly reports must be submitted to ETP that detail all marketing efforts and activities, contacts, distribution of orientations and applications, and a list of completed projects/approved contracts. Payments to contractor may be made monthly, upon evidence of satisfactory deliverables, including Panel-approved training projects.
5. **Approvals.** The selected bidders' proposal must be approved by the ETP Executive Director before marketing activities may begin.

SECTION 7 – MISCELLANEOUS

1. The successful bidders' marketing representatives shall attend mandatory meetings as requested by ETP and its Economic Development Director to assist in updating, planning, and evaluating the applications and marketing services provided. The marketing representatives are expected to work cooperatively with ETP's staff and other marketing partners in an effort to make a seamless transition from marketing to the development process.
2. The successful bidders' marketing representatives will coordinate with ETP's Economic Development Director to ensure there is no overlap with other marketing efforts. Failure to do so may lead to the termination of the contract. The successful bidders' marketing representatives must be pre-approved by ETP. Also, ETP has the right to terminate the contract should the marketing representatives fail to attend training, or fail to remain cognizant of current Panel rules, statutes, regulations, policies, and operational directives. ETP also reserves the right to terminate contracts with contractors who are not meeting performance goals, or when ETP marketing goals have been met, or when funding constraints preclude awarding additional training agreements.
3. Multiple applications from a single corporate entity with multiple facilities in California may not qualify as full and complete applications unless ETP determines that each site operates independently.
4. Training project applications submitted to ETP must be obtained through the marketing efforts of the successful bidder and may not originate from external sources, such as independent consultants for the ETP program.

SECTION 8 – EVALUATION CRITERIA

A. Criteria – (Total Points Possible: 100. Bidders must receive a minimum of 70 points in order to be eligible for the Cost Proposal opening).

CRITERIA	POINTS POSSIBLE	POINTS GIVEN
1. Bidder Experience and Expertise (30 points)		
a) The bidder has adequate experience with ETP programs and knowledge to assist them in marketing the ETP program to potential applicants.	10 points	
b) The bidder provides information supporting its program expertise and ability to market the ETP program to the proposed target groups successfully and to meet the contract deliverables.	10 points	
c) The bidder allocates staff with skills and abilities needed to market the ETP program, and can describe the background, qualifications and experience of these staff. The proposal provides an organization chart showing effective lines of authority and performance accountability mechanisms.	10 points	
A minimum of 21 points is required for this section		
2. Technical Quality of the Proposal (60 points)		
a) The proposal presents a complete marketing plan that describes the actions, activities and tasks needed to accomplish the deliverables by marketing to LWIBs and One-stop Centers as discussed in the ETP Strategic Plan.	15 points	
b) The proposal demonstrates that the bidder will provide the deliverables described in SECTION 6, PERFORMANCE AND DELIVERABLES, of the RFP.	15 points	
c) The bidder provides a comprehensive schedule that shows activities and a timeline for submission of project status updates and deliverables to ETP. In addition, the proposal explains how the schedule will be met by March 31, 2010.	15 points	
d) The proposal indicates how the customer base meets the priorities established in ETP's Strategic Plan, and includes a statement about the organization's statewide activities and how ETP will be integrated into those activities.	15 points	
A minimum of 42 points is required for this section		

3. Quality and Communication (10 points) a) The bidder establishes communication and quality control mechanisms, reasonable to assure the project deliverables are complete, communicated, accurate, on-time and within budget. A minimum of 7 points is required for this section	10 points	
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B. Basis for Points

ETP will use the following scoring system to assign points. Following this chart is a list of the considerations that raters may take into account when assigning individual points to a proposal.

POINTS	INTERPRETATION	GENERAL BASIS FOR POINT ASSIGNMENT
0	Inadequate	Proposal response (i.e., content and/or explanation offered is inadequate or does not meet ETP needs/requirements or expectations. The omission(s), flaw(s) or defect(s) are significant and unacceptable.
If possible points are: 5 = 1 pt. max. 10 = 3 pts. max. 15 = 5 pts. max. 20 = 6 pts. max. 25 = 7 pts. max. 30 = 10 pts. max.	Barely Adequate	Proposal response (i.e., content and/or explanation offered) is barely adequate or barely meets ETP's needs/requirements or expectations. The omission(s), flaw(s), or defect(s) are inconsequential and acceptable.
If possible points are: 5 = 3 pts. Max. 10 = 7 pts. max. 15 = 10 pts. max. 20 = 13 pts. max. 25 = 16 pts. max. 30 = 20 pts. max.	Fully Adequate	Proposal response (i.e., content and/or explanation offered) is fully adequate or fully meets ETP's needs/requirements or expectations. The omission(s), flaw(s), or defect(s), if any, are inconsequential and acceptable.
If possible points are: 5 = 5 pts. Max. 10 = 10 pts. max. 15 = 15 pts. max. 20 = 20 pts. max. 25 = 25 pts. max. 30 = 30 pts. max.	Excellent or Outstanding	Proposal response (i.e., content and/or explanation offered) is above average or exceeds ETP's needs/requirements or expectations. Minimal weaknesses are acceptable. Proposer offers one or more enhancing feature, method, or approach that will enable performance to exceed our basic expectations.

In assigning points for individual rating factors, raters may consider factors including, but not limited to the:

1. Extent to which a proposal response is lacking information, lacking depth or breadth, or lacking significant facts and details; and/or,
2. Extent to which a proposal response is fully developed, comprehensive, and has few, if any weaknesses, defects or deficiencies' and/or,
3. Extent to which a proposal response demonstrates that the bidder understands ETP's needs, the service sought, and the contractor's responsibilities; and/or,
4. Extent to which a proposal response illustrates the bidder's capacity to perform all services and meet all scope of work requirements; and/or,
5. Extent to which a proposal response, if implemented, will contribute to the achievement of ETP's goals and objectives; and/or,
6. Extent to which a proposal response demonstrates the bidder's capacity, capability, and commitment to exceed regular service needs (i.e., enhanced features, approaches, or methods; creative or innovative business solutions).

C. Award of Contract

Proposals received as a result of this RFP will be evaluated and the contract will be awarded in the following manner:

All eligible proposals (i.e., those filed on time and in the manner prescribed) will be reviewed to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements will then be scored.

The sealed envelopes containing the cost proposal for those proposals that meet the format requirements and standards will be publicly opened and read. The contract will be awarded to the lowest cost responsible proposer.

SECTION 9 – GLOSSARY

Full and Complete Application: An ETP application that includes all items requested by the ETP Development Analyst at the first Site Visit, as indicated on ETP's Application checklist.

Group of Employers:

- a) Two or more employers which combine efforts to form a consortium in order to meet the common training needs of specific occupations, or to address common training needs based on industrial trends; or
- b) Two or more employers which combine efforts whereby the primary employer assumes liability for the ETP contract, with secondary agreements between the primary employer and the supplier employers (or both the primary employer and the secondary suppliers contract with the ETP), and trains the employees of one or more of its suppliers due to the special and unique needs of the primary employers; and/or
- c) A professional association, trade association, or joint apprenticeship training committee; and/or
- d) Any economic development corporation which has been in existence for more than one year and whose Board of Directors in the majority is composed of representatives of employers that are eligible to participate in the ETP program. The Board of Directors must approve the ETP agreement.

High Unemployment Areas: Counties, portions of counties or other distinct geographic regions with unemployment rates at least 25 percent higher than the state average unemployment rate, based on the most recent Employment Development Department (EDD) unemployment statistics from its Labor Market Information Division (LMID).

High Wage Jobs: Employment that provides earnings equal to 50 percent (in the case of new hire training), or 60 percent (in the case of retraining) of the State or regional average hourly wage. This definition is further defined in the ETP legislation (Unemployment Insurance Code Section 10201(f)).

Job Training Contracts: Fully executed training agreements resulting from the applications and proposals approved by ETP. These are ultimately the 'deliverables' for Categories "1" and "2" under the marketing contracts created by this RFP.

Labor Market Information: Economic, occupational, geographic and demographic characteristics of the labor market. This should include population and labor force composition, industry and occupational trends and outlook, job opportunities, hiring and training practices, skill requirements and trends, wages, labor force estimates, career ladders, and occupational supply and demand.

Panel: ETP as an administrative agency, inclusive of Panel members and civil service staff. The term usually refers to the Panel members, but, in this case, may also include staff.

Performance-Based Marketing Contract: A contract for which remuneration is earned only after the successful bidder has performed the duties and deliverables described in the marketing agreement that results from this RFP.

Proposal: Presentation of project to the Panel.

Site Visit: The initial visit by an ETP Development Analyst to a training project applicant's place of business; at which time the ETP Application is provided. The applicant also describes its training plan to the analyst, who provides technical assistance in the application process.

Special Employment Training (SET): Special ETP funding categories for applicants that do not meet the regular funding categories; such as businesses that do not have out-of-state competition, as defined by ETP. These special categories are further defined in regulation, specifically Title 22, California Code of Regulations, Section 4409.

Training Agency: Any public or private training entity, state or local school, or education agency that has been in existence for a minimum of two years preceding the application to ETP, and has an established history of providing training and placement services. Furthermore, the Panel reserves the right to designate a certification entity for training agencies that operate as private post-secondary vocational schools.

Training Plan: A written purpose and scope of training for which funding is requested.

Subcontractors. Any party which the bidder wishes ETP to include in evaluating its qualifications and capability must be labeled as a "partner" or "major subcontractor" (terms of similar nature are acceptable).

- a. Major subcontractors are businesses owned at least 51 percent by interests other than the bidder, and which will carry out major, critical portions of SECTION 5, PROPOSAL EVALUATION PROCESS., in terms of responsibility, involvement, and in some instances, portions of the budget. These may be firms providing services or supplies. Major subcontractors operate under the direction of the bidder.
- b. Minor subcontractors are s businesses executing less critical, less sensitive portions of SECTION 5, PROPOSAL EVALUATION PROCESS.

Unit: Panel approved training contract(s) such as a MEC.

In the event of ambiguity, the definitions set forth in this Glossary shall be interpreted in accordance with the Panel's regulations at Title 22, California Code of Regulations, Section 4400 et seq.

"Material Deviations." Deviation from a requirement is material if it is not in substantial accord with the RFP requirements: provides an advantage to one bidder over another; or has a potentially significant effect on the delivery, quantity, or quality of items proposed, amount awarded, or on the overall cost to ETP. Material deviations cannot be waived. Material deviations will cause the bid to be disqualified.

ATTACHMENTS

COVER SHEET
(Please print or type)

Submit one (1) original and four (4) copies of this Attachment with your Technical Proposal.

The submission of this proposal does not obligate the ETP to fund the proposed program. If the proposal is approved for funding, a contract will be executed between the State of California and the proposer. When funding is authorized, the proposer will be expected to adhere to the terms of the executed contract.

The undersigned Contractor hereby proposes to furnish all labor, materials, tools and equipment, to provide marketing services to ETP in accordance with the specifications and provisions received with the RFP.

Full Legal Name of Proposer's Company/Organization:

Mailing Address:

Street City/County State ZIP

Telephone FAX E-mail address

Federal Taxpayer Identification Number: _____

Principal who is authorized to bind the proposer:

Typed Name Title

Original Signature Date

Contractor's contact person shall be: _____
Name and Phone Number

COST PROPOSAL

(Please print or type)

Please submit in a separate envelope marked "Cost Proposal"

Submit one (1) original of the Cost Proposal and required forms to the address indicated at the bottom of this form.

LATE PROPOSALS WILL NOT BE ACCEPTED

The undersigned Contractor hereby proposes to furnish all labor, materials, tools and equipment, and hold licenses necessary to provide Marketing Services to ETP in accordance with the specifications and provisions received with the RFP, for the **Total Cost of** _____ Dollars (\$ _____)

☒ Budget Detail Attached. **A Budget must be returned with the cost proposal**

Option to Renew: Year 2009/2010, Total Cost: _____ Dollars (\$ _____)
(Refer to Section 1, Overview, E)

Full Legal Name of Proposer's Company/Organization: _____

Type of Business: ☐ Individual ☐ Partnership ☐ Corporation ☐ Association

The Contractor certifies under penalty of perjury the accuracy of his/her license number, class, and expiration date. **(A proposal which does not contain the above information, or if the information is later proven false, shall be considered nonresponsive and rejected by the State agency.)**

Small Business (SB)/Nonprofit Veteran Service Agency Verification Attached ☐ Yes ☐ No

Small Business (SB)/Microbusiness Certification Verification Attached ☐ Yes ☐ No

A Non-Small Business Claiming a Minimum of 25% California Certified ☐ Yes ☐ No

Small Business Subcontractor Preference
(Complete and submit Page 2 of 3 with your proposal and SB Certification Verification)

Principal who will sign the contract:

Typed Name

Title

Original Signature

Date

Contractor's contact person shall be:

Name and Phone Number

Proposals that are returned by mail are to be sent to the Employment Development Department, P.O. Box 826880, MIC 62-C, Sacramento, CA 94280-0001. If bids are delivered in person, deliver to 722 Capitol Mall, Room 1100, Attn: Sheri Collins. All bids must be **received** and **time stamped** in Contract Services Group no later than **3:00 p.m., February 2, 2009**.

CALIFORNIA CERTIFIED SMALL BUSINESS SUBCONTRACTOR

Subcontractor Name	Address/Phone Number	Description of the work To be performed and/or Products supplied	Percentage of the net bid price

(Refer to Rules and Conditions, Small Business Certification Preference Programs for additional information.)

ATTENTION ALL BIDDERS

A. Federal Employer ID Number or Social Security Account Number (SSAN)

Title 2, California Code of Regulations Section 8117.5 requires that all contracting State agencies provide the Department of Fair Employment and Housing the Federal Employer ID Numbers of all vendors awarded State contracts in excess of \$5,000. Additionally, the Federal Internal Revenue Code requires the State to report certain payments to individuals. Accordingly, you must provide your Federal Employer ID Number or Social Security Account Number (SSAN) in the space provided.

B. Original Signature Requirement on Proosals

This is to remind bidders that bids must have an original signature, in ink, to be accepted by this office. If bids do not have an original signature in ink, they shall be considered nonresponsive and rejected. Signature stamps are NOT acceptable.

TRAVEL ALLOWANCES AND REIMBURSEMENTS

- A. **ACCOUNTABILITY/CLAIM REQUIREMENTS:** Receipts are required for every item of transportation and business expense incurred as a result of conducting state business except for actual expenses as follows:
- 1) Railroad and bus fares of less than \$25.00, when travel is wholly within the State of California.
 - 2) Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi, shuttle or hotel bus fares, and parking fees of \$10.00 or less for each continuous period of each item of transportation expenses noted in this item.
 - 3) Telephone, telegraph, fax or other business charges related to State business of \$5.00 or less.
 - 4) In the absence of a receipt, reimbursement will be limited to the non-receipted amount above.
- B. **HEADQUARTERS/RESIDENCE:** Travelers may not claim meals or lodging expenses within fifty (50) miles of their headquarters. Travelers may not claim lodging within 50 miles of their primary residence. Meal expenses may be claimed within 50 miles of their primary residence only when, the circumstances surrounding the business-related meal is beyond the control of the employee and it must be impractical to complete the business during normal work hours.

Business meals are not reimbursable when departments call meetings with their own and/or other department employees to conduct business. Claims for meal expenses where business is incidental to the meal or the attendance of the employee is primarily for public or community relations are specifically prohibited.

- C. **REIMBURSEMENT FOR MEALS AND LODGING:** Employees on travel status will be reimbursed actual expenses for lodging, meals and incidentals. Lodging and/or meals provided by the state or included in hotel expenses or conferences fees, or in transportation costs such as airline tickets, or otherwise provided shall not be claimed for reimbursement. Snack and continental breakfasts, such as rolls, juice and coffee are not considered to be meals.

Reimbursement shall be for actual expenses, subject to the following maximum rates:

1. Meals:

Breakfast	\$ 6.00
Lunch	\$10.00
Dinner	\$18.00
Incidentals	\$ 6.00

2. Lodging:

a) Statewide

Actual lodging expense supported by a receipt, to a maximum of \$84 plus tax per night, EXCEPT AS NOTED BELOW. Receipts include those for public campgrounds (no receipt = no lodging reimbursement).

In Alameda, San Francisco, Santa Clara and San Mateo Counties actual lodging, supported by a receipt, to a maximum of \$140 plus tax.

In the Los Angeles Counties and San Diego Counties actual lodging, supported by a receipt, to a maximum of \$110.

b) Outside California

Actual lodging plus taxes with lodging receipt and prior written permission of the State.

D. TIMEFRAMES:

1. In computing reimbursement for continuous travel of less than 24 hours use the following timeframes.

Breakfast: May be claimed if travel begins at or before 6 a.m. and ends at or after 9 a.m.

Dinner: May be claimed if travel begins at or before 5 p.m. and ends at or after 7 p.m.

2. In computing reimbursement for continuous travel of more than 24 hours use the following timeframes.

Breakfast: May be claimed if travel begins at or before 6 a.m. and ends at or after 8 p.m.

Lunch: May be claimed if travel begins at or before 11 a.m. and ends at or after 2 p.m.

Dinner: May be claimed if travel begins at or before 5 p.m. and ends at or after 7 p.m.

E. MILEAGE ALLOWANCES: Mileage reimbursement is 58.5 cents per mile.

F. MILEAGE REIMBURSEMENT RATES: When a traveler uses a privately owned automobile to travel to and from a common carrier and the automobile is not parked at the terminal during the period of travels, the traveler may claim double the number of miles between the terminal and home or headquarters, whichever is less.

G. METHOD OF TRAVEL: The traveler is required to choose the most economical method of transportation, unless so doing would compromise program objectives or result in significant costly delays.

PUBLIC CONTRACT CODE

Article 4, Contracts For Services

10335. (a) This article shall apply to all contracts, including amendments, entered into by any state agency for services to be rendered to the state, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor. Except as provided in Section 10351, all contracts subject to this article are of no effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval. This article shall apply to any state agency that by general or specific statute is expressly or impliedly authorized to enter into the transactions referred to in this section. This article shall not apply to contracts for the construction, alteration, improvement, repair, or maintenance of real or personal property, contracts for services subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, to contracts that are listed as exceptions in Section 10295, contracts of less than five thousand dollars (\$5,000) in amount, contracts of less than five thousand dollars (\$5,000) where only per diem or travel expenses, or a combination thereof, are to be paid, contracts between state agencies, or contracts between a state agency and local agency or federal agency.

(b) In exercising its authority under this article with respect to contracts for the services of legal counsel, other than the Attorney General, entered into by any state agency that is subject to Section 11042 or Section 11043 of the Government Code, the department, as a condition of approval of the contract, shall require the state agency to demonstrate that the consent of the Attorney General to the employment of the other counsel has been granted pursuant to Section 11040 of the Government Code. This consent shall not be construed in a manner that would authorize the Attorney General to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article.

(c) Until January 1, 2001, the department shall maintain a list of contracts approved pursuant to subdivision (b). This list shall be filed quarterly with the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget. The list shall be limited to contracts with a consideration in excess of twenty thousand dollars (\$20,000) during the life of the contract and shall include sufficient information to identify the provider of legal services, the length of each contract, applicable hourly rates, and the need for the services. The department shall add a contract that meets these conditions to the list within 10 days after approval. A copy of the list shall be made available to any requester. The department may charge a fee to cover the cost of supplying the list as provided in Section 6253 of the Government Code.

(d) Contracts subject to the approval of the department shall also have the department's approval for a modification or amendment thereto, with the following exceptions:

- (1) An amendment to a contract that only extends the original time for completion of performance for a period of one year or less is exempt. If the original contract was subject to approval by the department, one fully executed copy including transmittal document, explaining the reason for the extension, shall be sent to the legal office of the department. A contract may only be amended once under this exemption.

- (2) Contracts let or awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if authorized by the law requiring competitive bidding.
- (3) If an amendment to a contract has the effect of giving the contract as amended an increase in monetary amount, or an agreement by the state to indemnify or save harmless any person, the amendment shall be approved by the department.

10335.5. (a) "Consulting services contract," as used in this article, means all services that are of an advisory nature, provide a recommended course of action or personal expertise, have an end product which is basically a transmittal of information either written or verbal and that is related to the governmental functions of state agency administration and management and state agency program management or innovation, and that are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type. The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

(b) "Consulting services contract" does not include any of the following:

- (1) Contracts between a state agency and the federal government.
- (2) Contracts with local agencies, as defined in Section 2211 of the Revenue and Taxation Code, to subvene federal funds for which no matching state funds are required.

(c) The following consulting services contracts are exempt from the advertising and bidding requirements of this article:

- (1) Contracts which are temporary or time-limited appointments to a nontesting civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements. Payment under a consulting service contract may be on the basis of each hour or day devoted to the task or in one lump sum for the end product.
- (2) Contracts that can only be performed by a public entity as defined in subdivision (b) of Section 605 of the Unemployment Insurance Code.
- (3) Contracts solely for the purpose of obtaining expert witnesses for litigation.
- (4) Contracts for legal defense, legal advice, or legal services.
- (5) Contracts in an amount of less than five thousand dollars (\$5,000).
- (6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

10335.7. "State agency" as used in this article, means every state office, department, division, bureau, board, or commission, but does not include the Legislature, the courts, or any agency in the judicial branch of government.

Article 5

10365.5 (a) 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, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) Subdivision (a) does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than 10 percent of the total monetary value of the consulting services contract.

(c) Subdivisions (a) and (b) do not apply to consulting services contracts subject to (Chapter 10 commencing with Section 4525 of Division 5 of Title 1) of the Government Code.

10367. (a) Each contractor shall be advised in writing on the standard contract form that his or her performance, or the firm's performance under the contract will be evaluated.

(b) The department shall use standardized evaluation forms and make them available to every state agency. Each state agency shall use post-evaluation forms to evaluate all consulting services contracts totaling five thousand dollars (\$5,000) or more. The department shall devise standards and criteria for the post-evaluation forms. These standardized post-evaluation forms shall consist of a form for assessing the need and value of the consulting services contract to the state, and a form for assessing the usability and utility of the completed consulting services contract.

10369. (a) Each state agency shall conduct a post-evaluation by completing the post-evaluation form of each consulting services contract totaling five thousand dollars (\$5,000) or more that it executes.

(b) The agency shall evaluate the performance of the contractor in doing the work or delivering the services for which the contract was awarded. The agency shall report on all of the following:

- (1) Whether the contracted work or services were completed as specified in the contract, and reasons for and amount of any cost overruns or delayed completions.
- (2) Whether the contracted work or services met the quality standards specified in the contract.
- (3) Whether the contractor fulfilled all the requirements of the contract and if not, in what ways the contractor did not fulfill the contract.
- (4) Factors outside the control of the contractor that caused difficulties in contractor performance.
- (5) Other information the department may require.
- (6) How the contract results and findings will be utilized to meet the agency goals.

(c) If the contractor's performance was judged unsatisfactory on any of the factors specified in subdivision (b) and was not mitigated by circumstances specified in paragraph (4) of subdivision (b), the evaluation shall be considered unsatisfactory for the purpose of subdivisions (e) and (f).

(d) The post-evaluation shall be prepared within 60 days of the completion of the contract.

(e) Post-evaluations shall remain on file at the offices of the awarding state agency for a period of 36 months following contractor completion. If the contractor did not satisfactorily perform the work or service specified in the contract, the state agency conducting the evaluation shall place one copy of the evaluation form in the state agency's contract file and send one copy of the form to the department within five working days of the completion of the evaluation.

(f) Upon filing an unsatisfactory evaluation with the department, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have the right, within 30 days after receipt, to submit to the agency and the department defending his or her performance under the contract. The contractor's statement shall be filed with the evaluation in the agency's contract files and in the department.

10370. The evaluations and contractor responses on file with the state agencies and the department shall not be public records. The department shall act as a central depository

for all state agencies making evaluation or desiring information on a contractor's record with the state and shall send a copy of any post-evaluation report and response to the contracting manager or contracting officer of any state agency upon request. The post-evaluations and contractor responses shall remain on file for a period of 36 months only. Failure by the awarding state agency to send a negative post-evaluation to the department may be grounds for rejection of future contracts or modification of exemptions.

10371. The following provisions shall apply to all consulting services contracts:

(a) Each state agency shall, regardless of the fiscal amount involved, use available private resources only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.

(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business-firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars (\$12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars (\$12,500) approved by the department.

(c) Each state agency shall, prior to signing a consulting services contract totaling five thousand dollars (\$5,000) or more, prepare detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.

(d) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award.

For the purpose of this subdivision an "emergency" means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

(e) No consulting services contractor shall be awarded a contract totaling five thousand dollars (\$5,000) or more, unless all of the following apply:

- (1) The state agency has reviewed any contractor evaluation form on file with the department in accordance with Section 10369.
- (2) Each state agency shall require that a completed resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor, be attached to the contract for public record and is made a part of the contract.
- (3) The department shall notify a state agency seeking approval of a proposed contract within 10 working days if it has a negative evaluation in its files on a previous contract or contracts awarded to this contractor.

(f) The department may require special evaluation procedures for multiyear contracts or for contracts calling for special evaluation procedures beyond the post-evaluation.

(g) Any contract for consulting services awarded without competition shall be listed in the California State Contracts Register. The information contained in the listing shall include the contract recipient, amount, and services covered. The requirement of this subdivision shall not apply to any contract awarded without competition executed with an expert witness for purposes of civil litigation in a pending case.

(h) The department shall have the duty to restrict or terminate the authority of a state agency to enter into consultant contracts if the state agency has consistently avoided the proper preparation, retention, or submission of post-evaluation forms, as required by this article.

10381. (a) The department shall ensure that all state agencies are kept fully informed of the department's plans and procedures for implementing the provisions of this article. The

department shall make information available on implementation procedures to all interested parties.

(b) The department shall ensure that every consultant services contract contains standard language that fully informs the contractor of his or her duties, obligations, and rights under this article, and any additional contractor rights and obligations which the department determines should be included.

(c) Each consulting services contract shall have a provision for settlement of contract disputes.

Article 8; Conflict of Interest

10410. No officer or employee in the state civil service or other appointed state official shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest and which is sponsored or funded, or sponsored and funded, by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the officer's or employee's regular state employment. No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods.

10411. (a) No retired, dismissed, separated, or formerly employed person of any state agency or department employed under the state civil service or otherwise appointed to serve in state government may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency or department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left state employment.

(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from state service, no person employed under state civil service or otherwise appointed to serve in state government may enter into a contract with any state agency, if he or she was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. The prohibition of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract for the continuation of an attorney's services on a matter he or she was involved with prior to leaving state service.

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

A. CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

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

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

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

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the

State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

STANDARD AGREEMENT
Attachment 6
STD. 213 (Rev 06/03)

RFP 44056

	AGREEMENT NUMBER
	REGISTRATION NUMBER

SAMPLE STANDARD AGREEMENT

- This Agreement is entered into between the State Agency and the Contractor named below
STATE AGENCY'S NAME
Employment Training Panel (ETP)
CONTRACTOR'S NAME
(Successful Proposer)
- The term of this Agreement is: March 1, 2008 through February 28, 2010
- The maximum \$ of this Agreement is:
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Page
Attachment A-1, Specifications	Pages
Attachment A-2, Resumes	Pages
Exhibit B – Budget Detail and Payment Provisions	Page
Attachment B-1, Budget Detail	
* Exhibit C – General Terms and Conditions	GTC 307
Exhibit D – Special Terms and Conditions	Pages
Exhibit E – Intellectual Property Provisions	Pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto
These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED	
1		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME		
Employment Training Panel (ETP)		
BY (Authorized Signature)	DATE SIGNED	
1		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
1100 J Street, MIC 64, Sacramento, CA 95814		
☐ Exempt		

EXHIBIT A

1. This Agreement is entered into by and between the Employment Training Panel, hereinafter referred to as ETP, and the (Successful Bidder) hereinafter referred to as the Contractor, for the purpose of the Contractor providing marketing services to ETP.
2. The Contract Monitors during the term of this agreement will be:

Employment Training Panel
Kim Smith
Assistant Director
(916) 327-5330
FAX (916) 327-5479

(Successful Bidder)

EXHIBIT B

1. Invoicing and Payment

1. For services satisfactorily rendered and upon receipt and approval of the invoices, the ETP agrees to compensate the Contractor for actual expenditures incurred, in accordance with the **Unit Cost of** _____ and the Budget Sheet, _____, which is attached hereto and made a part of this Agreement. **The total amount of this Agreement shall not exceed** _____.
2. Invoices shall include the Agreement Number _____ and shall be submitted, in triplicate, not more frequently than monthly, based on the number of contracts, in arrears to:

Employment Training Panel
1100 J Street, 4th Floor
Sacramento, CA 95814
Attn: Kim Smith

2. Budget Contingency Clause

1. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the ETP program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
2. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of the ETP program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

EXHIBIT D

1. Potential Subcontractors

Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by 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 monies to any subcontractor.

2. Consultant – Staff Expenses

The Contractor represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have contractual relationship with any governmental entity.

3. Public Contract Code (Consultant Services)

Contractor is advised that he/she has certain duties, obligations, and rights under the Public Contract Code, Article 5, Sections 10355 – 10412, with which the Contractor should be familiar with.

4. Contractor Evaluation

Within sixty (60) days after the completion of this Agreement, the Contract Manager shall complete a written evaluation of Contractor's performance under this Agreement. If Contractor did not satisfactorily perform the work, a copy of the evaluation will be sent to the State Department of General Services, Office of Legal Services, and to Contractor within 15 working days of the completion of the evaluation. (PCC 10369)

5. Settlement of Disputes

In the event of a dispute between ETP and the Contractor over any part of this Agreement, the dispute may be submitted to non-binding arbitration upon the consent of both ETP and the Contractor. An election for arbitration pursuant to this provision shall not preclude either party from pursuing any remedy for relief otherwise available.

6. Termination Clause

This Agreement may be terminated by ETP by giving written notice 30 days prior to the effective date of such termination.

7. Advance Work

Should the Contractor begin work before receiving a copy of the approved Agreement, any work performed before approval shall be considered as having been done at the Contractor's own risk and as a volunteer.

8. Force Majeure

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 caused by "Force Majeure." As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of God such as earthquakes, floods and other natural disasters such that performance is impossible.

9. Change in Contractor Staff

Should a Contractor's team member(s) become unavailable prior to a start date agreed upon with ETP, the Contractor will propose an equally well-qualified replacement consultant after consultation with ETP. All replacements are subject to ETP approval. Switching staff that were identified in the Contractor's proposal with alternates immediately, or soon thereafter, after execution of this Agreement, are grounds for termination of this contract. ETP has the right to request removal and/or replacement of Contractor resources.

10. Avoidance of Conflicts Of Interest by Contractor

- A. The Contractor agrees that all reasonable efforts will be made to ensure that no conflict of interest exists between its officers, agents, employees, consultants or members of its governing body.
- B. The Contractor shall prevent its officers, agents, employees, consultants or members of its governing body from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others such as those with whom they have family, business or other ties.
- C. In the event that ETP determines that a conflict of interest situation exists, any cost associated with the conflict may constitute grounds for termination of this agreement. This provision shall not be construed to prohibit the employment of persons with whom the Contractor's officers, agents, or employees have family, business or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant and such persons have successfully competed for employment with other applicants on a merit basis.
- D. Certain consultants designated by the ETP's Conflict of Interest Code are required to file a Statement of Economic Interests, Form 700. The Contractor agrees that if the Director of EDD determines that a Statement of Economic Interests, Form 700, is required, the consultant shall obtain the Form 700 and filing instructions from the EDD Personnel Office.

11. Travel Clause

The travel and per diem shall be set in accordance with Department of Personnel Administration for comparable classes and that no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from ETP.

EXHIBIT E

ADDITIONAL PROVISIONS

INTELLECTUAL PROPERTY PROVISIONS

1. FEDERAL FUNDING.

In any Contract funded in whole or in part by the federal government, ETP may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the Contract, except as provided in 37 Code of Federal Regulations part 401.14. However, pursuant to 29 CFR Section 97.34 the federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

2. OWNERSHIP.

A. Except where ETP has agreed in a signed writing to accept a license, ETP shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or ETP and which result directly or indirectly from this Contract.

B. For the purposes of this Contract, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by ETP, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(1) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced,

conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. "Works" does not include articles submitted to peer review or reference journals or independent research projects.

- C. In the performance of this Contract, Contractor may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Contract. In addition, under this Contract, Contractor may access and utilize certain of ETP's Intellectual Property in existence prior to the effective date of this Contract. Except as otherwise set forth herein, Contractor shall not use any of ETP's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of ETP. Except as otherwise set forth herein, neither the Contractor nor ETP shall give any ownership interest in or rights to its Intellectual Property to the other Party. If, during the term of this Contract, Contractor accesses any third-party Intellectual Property that is licensed to ETP, Contractor agrees to abide by all license and confidentiality restrictions applicable to ETP in the third-party's license agreement.
- D. Contractor agrees to cooperate with ETP in establishing or maintaining ETP's exclusive rights in the Intellectual Property, and in assuring ETP's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Contract, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions contained in **paragraphs one through nine**. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to ETP all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or ETP and which result directly or indirectly from this Contract or any subcontract.
- E. Contractor further agrees to assist and cooperate with ETP in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce ETP's Intellectual Property rights and interests.

3. RETAINED RIGHTS / LICENSE RIGHTS.

- A. Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or ETP and which result directly or indirectly from this Contract, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Contract. Contractor hereby grants to ETP, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute,

and dispose of Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Contract, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.

- B. Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Contract, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of ETP or third party, or result in a breach or default of any provisions of **paragraphs one through nine** or result in a breach of any provisions of law relating to confidentiality.

4. COPYRIGHT.

- A. Contractor agrees that for purposes of copyright law, all works (as defined in paragraph two of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Contract shall be deemed "works made for hire." Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Contract will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all works performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to ETP to any work product made, conceived, derived from, or reduced to practice by Contractor or ETP and which result directly or indirectly from this Contract.
- B. All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this Contract that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or ETP and which result directly or indirectly from this Contract may not be reproduced or disseminated without prior written permission from ETP.

5. PATENT RIGHTS.

With respect to inventions made by Contractor in the performance of this Contract, which did not result from research and development specifically included in the Contract's scope of work, Contractor hereby grants to ETP a license as described under **paragraph three** for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Contract's scope of work, then Contractor agrees to assign to ETP, without additional compensation, all its right, title and interest in and to such inventions and to assist ETP in securing United States and foreign patents with respect thereto.

6. THIRD-PARTY INTELLECTUAL PROPERTY.

Except as provided herein, Contractor agrees that its performance of this Contract shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining ETP's prior written approval; and (ii) granting to or obtaining for ETP's, without additional compensation, a license, as described in **paragraph three**, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Contract. If such a license upon these terms is unattainable, and ETP determines that the Intellectual Property should be included in or is required for Contractor's performance of this Contract, Contractor shall obtain a license under terms acceptable to ETP.

7. WARRANTIES.

A. Contractor represents and warrants that:

- (1) It has secured and will secure all rights and licenses necessary for its performance of this Contract.
- (2) Neither Contractor's performance of this Contract, nor the exercise by either Party of the rights granted in this Contract, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or ETP and which result directly or indirectly from this Contract will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (3) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (4) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
- (5) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to ETP in this Contract.
- (6) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the

acquisition, operation or maintenance of computer software in violation of copyright laws.

- (7) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Contract.

- B. ETP MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS CONTRACT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

8. INTELLECTUAL PROPERTY INDEMNITY.

- A. Contractor shall indemnify, defend and hold harmless ETP and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of ETP's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or ETP and which result directly or indirectly from this Contract. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Contract. ETP reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against ETP.

- B. Should any Intellectual Property licensed by the Contractor to ETP under this Contract become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve ETP's right to use the licensed Intellectual Property in accordance with this Contract at no expense to ETP. ETP shall have the right to monitor and

appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for ETP to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified

Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, ETP may be entitled to a refund of all monies paid under this Contract, without restriction or limitation of any other rights and remedies available at law or in equity.

- C. Contractor agrees that damages alone would be inadequate to compensate ETP for breach of any term of this Intellectual Property provisions contained in **paragraphs one through nine** by Contractor. Contractor acknowledges ETP would suffer irreparable harm in the event of such breach and agrees ETP shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

9. SURVIVAL.

The provisions set forth herein shall survive any termination or expiration of this Contract or any project schedule.

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION**

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

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS WHICH ARE AN INTEGRAL
PART OF THE CERTIFICATION.)**

1. The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules and implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," "without modification, in all lower tier covered transaction and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the List of Parties Excluded From Procurement or Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all* subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all* subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Grantee/Contractor Organization

Program/Title

Name and Title of Authorized Signatory

Signature

Date

*Note: In these instances, "All," in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over \$100,000 (per 29 CFR 93.110).

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Prime Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10.a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): _____	b. Individual Performing Services (include address if different from No. 10a.) (last name, first name, MI): _____	
(attach Continuation Sheet (s) SF-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ actual _____ planned _____	13. Type of Payment (check all that apply): a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other; specify: _____	
12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and date(s) of Service, including officer(s), employee(s) or Member(s) contacted, for Payment Indicated on Item 11: (attach Continuation Sheet (s) SF-LLL-A, if necessary)		
15. Continuation Sheet (s) SF-LLL-A attached: Yes _____ No _____		
16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DARFUR CONTRACTING ACT

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a "scrutinized" company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, please complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

1. We do not currently have, or we have not had within the previous
 Initials three years, business activities or other operations outside of the
 United States.

OR

2. We are a scrutinized company as defined in Public Contract Code
 Initials section 10476, but we have received written permission from the
 Department of General Services (DGS) to submit a bid or proposal
 pursuant to Public Contract Code section 10477(b). A copy of the
 written permission from DGS is included with our bid or proposal.

OR

3. We currently have, or we have had within the previous three years,
 Initials business activities or other operations outside of the United States,
 + certification but we certify below that we are not a scrutinized company
 below as defined in Public Contract Code section 10476.

CERTIFICATION For # 3:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

Proposer/Bidder Firm Name (Printed)		Federal ID Number
By (Authorized Signature)		
Printed Name and Title of Person Signing		
Date Executed	Executed in the County and State of	