

**REQUEST FOR QUALIFICATIONS
FOR
SHARED GOVERNANCE CONSULTING SERVICES
RFQ NO. SBCMP0000049919**

Release Date: Friday, April 6, 2018

Statement of Qualifications Due Date:
Tuesday, May 1, 2018, 3:00 P.M. PST

At: California State University, San Bernardino
Procurement and Contracts
5500 University Parkway, SH 125
San Bernardino, CA 92407
Marie.torres@csusb.edu

All questions must be submitted in writing no later than: Tuesday, April 17, 2018, 3:00 P.M. PST. Email your questions to RFQ Administrator: Marie Torres, Interim Manager of Procurement, email: marie.torres@csusb.edu by the deadline.

Any questions concerning the Request For Qualifications (RFQ) and all answers will also be posted on the CSUSB Website: <https://www.csusb.edu/procurement/request-qualifications>

Official RFQ Notices/Addenda

To ensure that no firm is provided advantage over another; all requirements are specified in this RFQ. Any changes to the requirements will be posted as an addendum to the RFQ on the CSUSB website: <https://www.csusb.edu/procurement/request-qualifications> no later than April 24, 2018. Firms are solely responsible for monitoring the website for and adhering to any RFQ addenda.

Prohibited Communications:

From the RFQ release date until a contract for these services is fully executed, individuals and/or firms are prohibited from communicating with campus faculty or staff, other than the RFQ Administrator, concerning this RFQ or the resulting contract. Any communications could be considered attempts to lobby or market services and are therefore prohibited by CSUSB Policy. Firms will be disqualified from contract consideration if this prohibition is not honored.

CSUSB reserves the right to withdraw this RFQ at any time without prior notice and to reject any and all responses to this RFQ. The rejection of any or all Statements of Qualifications shall not render CSUSB liable for costs or damages.

I. INTRODUCTION AND BACKGROUND

California State University, San Bernardino is a preeminent center of intellectual and cultural activity in Inland Southern California. Opened in 1965 and set at the foothills of the beautiful San Bernardino Mountains, the university serves more than 20,000 students each year and graduates about 4,000 students annually.

More information about CSUSB is available at <https://www.csusb.edu/about-csusb>.

California State University, San Bernardino (CSUSB) seeks proposals from qualified consultants to assist the university with strengthening shared governance across all key stakeholder groups at the university (faculty, staff, students, and administration). Consultants who are considered for this opportunity must be well-versed experts in shared governance, able to carefully listen and consider the perspectives of all stakeholder groups, and effectively mediate where appropriate between stakeholder groups. The goal will be to produce a statement of shared governance at CSUSB, including an enhanced understanding of differentiated decision making at the university and what each stakeholder groups should generally expect.

CSUSB will request that the selected consultant will be available to begin work in October 2018 and ideally, conclude work by the end of December 2018. All work with campus stakeholder groups is expected to be completed in person and on campus.

Through this Request for Qualifications (RFQ), CSUSB seeks to pre-qualify and contract with one or more qualified individuals and/or consulting firms with experience in providing shared governance consulting services to public universities of similar size and complexity. The services sought include, but are not limited to:

- Governance Reviews: industry best practices, leading practices, policy development and review;
- Organizational Development Services: organizational assessment, morale building, conflict resolution, change management training.

This RFQ details the requirements needed by CSUSB and instructs interested individuals and/or consulting firms on the application and selection process. All individuals and/or consulting firms meeting the minimum qualifications outlined in Section II of this RFQ are invited to submit a Statement of Qualifications.

As specific projects are identified, CSUSB will assign the project to the contractor with the best fit of experience for the specified project.

II. MINIMUM QUALIFICATIONS

Individuals and/or consulting firms must clearly demonstrate meeting the minimum qualifications for their Statement of Qualifications to be considered.

The respondent must have experience providing shared governance consulting services for higher education institutions, with preference given to those who have provided consulting services at public university campuses. Preference will be provided to submissions from consultants who have professionally worked directly in a higher education setting, have executive/senior level administrative experience, served in faculty leadership and/or senates, and/or, has research experience in shared governance. In addition, demonstrated experience with leading a bottom up process to a successful resolution is highly desired.

The respondent must answer all questions included in this RFQ in their entirety.

III. SCOPE OF SERVICES

CSUSB is interested in pre-qualifying one or more individuals and/or consulting firms to perform shared governance consulting services. Selected consultants will be included in a short list. On an as-needed basis, CSUSB will identify projects and prepare respective scopes of work. Bids will be requested from the short-listed consultants in the appropriate service areas to perform the scope. The consultant with the best fit of experience for the specified project will be selected, resulting in a contract to perform the described services. The services sought include, but are not limited to:

Leadership Development

Consultant selected for this service may administer a leadership self-evaluation; recommend or provide educational training to members of the campus stakeholder groups (faculty, staff, students, and/or administrators) to enhance their knowledge of university shared governance to better fulfill their fiduciary duty; conduct team-building strategies, and provide consultations related to leadership development.

Governance Reviews

Consultant selected may review any CSUSB, California State University (CSU), and other university Shared Governance Policies and Statements, providing recommendations based on industry best practices and current leading practices.

Organizational Development Services

Consultant may assist in the development of morale-building strategies and recommend or provide training for conflict resolution and change management.

IV. RFQ PROCESS

A. Evaluation Process

The selected proposer(s) must successfully pass all the following levels of review:

1. Level I. Review of Qualifications, Experience, & References: Consultant must demonstrate they meet the minimum qualifications (see Section II); must demonstrate a positive record as a

responsible contractor; and must have the resources and experience to perform the required services.

2. Level II. Administrative Responsiveness: Consultant's Statement of Qualifications must demonstrate their responsiveness to CSUSB required documents as outlined in Appendix A – General Conditions.

3. Level III. Review of Services Offered & Areas of Expertise: Consultant's Statement of Qualifications, responses to questionnaire, and areas of expertise are evaluated and ranked by the evaluation panel. Interviews will be conducted.

4. Level IV. Final Approval by CSUSB: Consultants that demonstrate to be the best fit to provide upcoming-shared governance services anticipated for CSUSB, as determined by the evaluation panel, will be recommended to the CSUSB President for contract award. Based on the selection committee recommendation, the CSUSB President has sole discretion to make the final determination.

B. Consultant Questions & Restricted Contact with CSUSB Personnel

Please submit all questions by email to the RFQ Administrator identified on the RFQ cover page. Questions from all proposers and answers will be posted on the CSUSB website listed on the cover page.

C. Statement of Qualifications Deadline

All RFQ responses are due at CSUSB by the date and time indicated on the cover of this RFQ.

Submission: Please provide one (1) single pdf file with page numbers and appropriate header by email to the contract administrator listed on the cover page. Each page footer must contain the ref "RFQ NO. SBCMP0000049919".

D. Evaluation Criteria

Finalists will be requested to make oral presentations and respond to questions from the evaluation task force team or its representatives. The evaluation task force team will review all Statements of Qualifications according to the following criteria:

1. Consultant's experience and capabilities;
2. Qualifications and experience of assigned professional personnel;
3. Quality of Statement of Qualifications.

All Statements of Qualifications submitted will be reviewed by respective CSUSB staff. Thereafter, interviews with the selected consultants will be scheduled with the selection task

force. The purpose of the interview is to expand on the information provided in the RFQ. These interviews may be conducted in person at CSUSB. However, they may be conducted telephonically or via video conference, if necessary. Those consultants deemed to be qualified by the evaluation team will be recommended to the President for his consideration and approval.

V. QUESTIONNAIRE

Please provide a thorough answer immediately following each question. If attachments are provided in response to a question, indicate in the answer the specific tab and/or pages that respond to the question.

1. Indicate your legal business name, address, telephone number, and legal entity type (individual, limited liability partnership, corporation, etc.).
2. Indicate the person(s) authorized to represent the consultant in negotiations with CSUSB with respect to the RFQ and subsequently awarded contract including contact names, titles, telephone, fax numbers and e-mail addresses.
3. Submission may include up to three samples of your work product that showcases the consultant's area(s) of expertise. Failure to provide samples will not disqualify the submission
4. Provide a curriculum vitae/biography/resume for each team member, including the hourly rates proposed to be charged to CSUSB for each team member. If a team response, please indicate what experience the team has working together.
5. Provide a brief statement of the proposed approach to be used for this project.
6. Disclose the nature of any past, present, or pending relationship with any CSUSB faculty, staff, student or other affiliate including CSUSB foundation trustee or CSU Board of Trustee Member, consultant, or staff. How have you reviewed this potential engagement for conflict of interest? Were there any conflicts, potential conflicts, or other issues that could raise a reasonable appearance of a conflict of interest?
7. Please provide at least three references that can speak to respondent's qualifications for this RFQ.

Questions Concerning Your Statement of Qualifications

8. Is your consultant requesting any alternatives and/or substitutions to the CSUSB standard RFQ and contracting provisions? See General Provisions for Service Acquisitions (Appendix A). CSUSB reserves the right to determine if the alternatives/substitutions are acceptable.

Required Compliance Documents

9. Please submit all REQUIRED COMPLIANCE DOCUMENTS specified in the General Conditions and Compliance Documents (Appendix A). Failure to complete these documents will deem your Statement of Qualifications as non-responsive.

**CSU GENERAL PROVISIONS
FOR
SERVICE ACQUISITIONS
Revised 10/15/14**

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1. Commencement of Work

Contractor shall not commence work under the Contract until Contractor has received a fully executed Contract and been given written approval to proceed. Any work performed by Contractor prior to the date of approval shall be considered as having been performed at Contractor's own risk and as a volunteer.

2. Contract Alterations & Integration

No alteration or variation of the Contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated in writing in the Contract shall be binding on any of the parties hereto.

3. Severability

Contractor and CSU agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of its presumed non-applicability of such provision. Should the illegal or unenforceable provision be a material or essential term of the Contract, [the Contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

4. Independent Status

Contractor and its employees and agents, and subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees or agents of CSU or the State of California. While Contractor may be required by this Contract to carry Worker's Compensation Insurance, in no event shall Contractor and its employees and agents be entitled to unemployment or workers' compensation benefits from CSU.

5. Governing Law

To the extent not inconsistent with applicable federal law, this Contract shall be construed in accordance with and governed by the laws of the State of California

6. Contractor's Power and Authority

Contractor warrants it has full power and authority to enter into this Contract and will hold CSU harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor shall not enter into any arrangement, agreement or contract with any third party that might abridge any rights of the CSU under this Contract.

7. Assignments

Contractor shall not assign this Contract, either in whole or in part, without CSU's written consent, which will not be unreasonably withheld.

8. Personnel

Contractor shall give its personal attention to the performance of the Contract and shall make every effort consistent with sound business practices to honor CSU's requests regarding Contractor's assignment of its employees. However, Contractor maintains the sole right to determine the assignment of its employees in order to keep all phases of work under its control. If an employee of Contractor is unable to perform due to illness, resignation or other factors beyond Contractor's control, Contractor shall use its best effort to provide suitable substitute personnel.

9. Waiver of Rights

Any action or inaction by CSU or the failure of CSU on any occasion to enforce any right or provision of this Contract shall not be a waiver by CSU of its rights hereunder and shall not prevent CSU from enforcing such provision or right on any future occasion. CSU's rights and remedies provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

10. Time

Time is of the essence in the performance of this Contract.

11. Entire Contract

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of each party.

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12. Appropriation of Funds

- (a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any commodities furnished under the Contract and not yet paid for by CSU, terminate any future services and commodities to be supplied to the CSU under the Contract, and relieve the CSU of any further obligation therefore.
- (b) CSU agrees that if provision (a) above is involved, commodities shall be returned to Contractor in substantially the same condition in which they were delivered, subject to normal wear and tear. CSU further agrees to pay for packing, crating, transportation to Contractor's nearest facility and for reimbursement to Contractor for expenses incurred for its assistance in such packing and crating.

13. Cancellation

CSU has the right to cancel this Contract at any time and without future financial obligation upon thirty (30) days written notice to Contractor.

14. Termination for Default

CSU may terminate the Contract and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the CSU may proceed with the work in any manner deemed proper by the CSU. The cost to the CSU shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.

15. Rights and Remedies of CSU for Default

- (a) In the event any Deliverables furnished or services provided by Contractor in the performance of this Contract should fail to conform to the requirements herein, or to the sample submitted by Contractor, CSU may reject the same, and it shall thereupon become Contractor's duty to forthwith reclaim and remove all nonconforming deliverables and correct the performance of services, without expense to the CSU, and to immediately replace all such rejected items with others conforming to the specifications or samples. Should Contractor fail, neglect, or refuse to do so, CSU shall thereupon have the right, but not the obligation, to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct the cost of such cover from any moneys due or that may thereafter become due to Contractor.
- (b) In the event Contractor fails to make prompt delivery of any item as specified in the Contract, the same conditions as to CSU's right, but not obligation, to purchase in the open market and receive reimbursement from Contractor, as set forth in (a), above shall apply.
- (c) In the CSU terminates this Contract, either in whole or in part, for Contractor's default or breach, Contractor shall compensate CSU, in addition to any other remedy CSU may have available to it, for any loss or damage sustained and cost incurred by the CSU in procuring any items that Contractor agreed to supply.
- (d) CSU's rights and remedies provided above shall not be exclusive and shall be in addition to any other rights and remedies provided by law, equity or this Contract.

16. Warranty

Contractor warrants that

- (i) deliverables and services furnished hereunder will conform to the requirements of this Contract (including, without limitation, all descriptions, specifications, and drawings identified in the Statement of Work, if any), and
- (ii) the deliverables will be free from defects in materials and workmanship. Where the parties have agreed to design specifications in the Statement of Work directly or by reference, Contractor warrants the deliverables shall provide all functionality required thereby.

17. Safety and Accident Prevention

In performing work under this Contract on CSU premises, Contractor shall conform to all specific safety requirements contained in this Contract or as required by law or regulation. Contractor shall take all additional precautions as the CSU may reasonably require for safety and accident prevention purposes. Contractor's violation of such rules and requirements, unless promptly corrected, shall constitute a material breach of this Contract.

18. Insurance Requirements

The Contractor shall not commence Work until it has obtained all the insurance required in this Contract, and such insurance has been approved by the CSU.

(a) Policies and Coverage.

(1) The Contractor shall obtain and maintain the following policies and coverage:

- (i) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering Work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Work.

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(ii) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists

(iii) Worker's Compensation including Employers Liability Insurance as required by law.

(2) The Contractor also may be required to obtain and maintain the following policies and coverage:

(i) Environmental Impairment Liability Insurance should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.

(ii) Other Insurance by agreement between the Trustees and the Contractor.

(b) Verification of Coverage.

The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the Work is accepted as complete. The Trustees reserve the right to require the Contractor to furnish the Trustees complete, certified copies of all required insurance policies.

(c) Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in this Agreement. The insurance policies shall contain, or be endorsed to contain, the following provisions.

(1) For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.

(2) For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.

(3) Each insurance policy required by this section shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty (30) Days prior written notice by certified mail, return receipt requested, has been given to the Trustees.

(4) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

(d) Amount of Insurance.

(1) For all projects, the insurance furnished by Contractor under this Agreement shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(i) Comprehensive or Commercial Form General Liability Insurance--Limits of Liability
\$2,000,000 General Aggregate

\$1,000,000 Each Occurrence--combined single limit for bodily injury and property damage.

(ii) Business Automobile Liability Insurance-Limits of Liability

\$1,000,000 Each Accident-- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.

(iii) Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.

(2) For projects involving hazardous materials, the Contractor shall provide additional coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(i) Environmental Impairment (pollution) Liability Insurance-Limits of Liability

\$10,000,000 General Aggregate

\$ 5,000,000 Each Occurrence-- combined single limit for bodily injury and property damage, including cleanup costs.

(ii) In addition to the coverage for Business Automobile Liability Insurance, the Contractor shall obtain for hazardous material transporter services:

(a) MCS-90 endorsement

(b) Sudden & Accidental Pollution endorsement--Limits of Liability*

\$2,000,000 Each Occurrence

\$2,000,000 General Aggregate

*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

With the Trustees' approval, the Contractor may delegate the responsibility to provide this additional coverage to its hazardous materials subcontractor. When the Contractor returns its signed project construction phase agreement to the Trustees, the Contractor shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Contractor shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all CSU requirements. Further, this letter will provide

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that the subcontractor's certificate of insurance will be provided to the Trustees as soon as the Contractor fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed, whichever is less.

(e) Acceptability of Insurers.

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to the University.

(f) Subcontractor's Insurance.

Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Contract, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's Work. Contractor shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained, and approved by the CSU. Only the Contractor and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials.

(g) Miscellaneous.

- (1) Any deductible under any policy of insurance required in this Contract shall be Contractor's liability.
- (2) Acceptance of certificates of insurance by the Trustees shall not limit the Contractor's liability under the Contract.
- (3) In the event the Contractor does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.
- (4) If the Trustees are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the Trustees for all such damages.
- (5) The Contractor's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.
- (6) The Contractor's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Contractor negligence shall be limited to five percent of the Contract.

19. General Indemnity

Contractor shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University, CSU, and their respective officers, agents and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from Contractor's performance of this Contract.

20. Invoices

Invoices shall be submitted, in arrears, to the address stipulated in the Contract. The Contract number must be included on the invoice. Final invoice shall be marked as such.

- (a) In the event that additional services are required, the Contractor shall submit invoices in accordance with provisions herein.
- (b) For work of a continuing nature, the Contractor shall submit invoices in arrears, upon completion of each phase. Contractor shall be reimbursed for travel, subsistence and business expenses necessary for the performance of services pursuant to the Contract in accordance with CSU policy.
- (c) Unless otherwise specified, the CSU shall pay properly submitted invoices not more than 45 days after
 - (i) the performance completion date of services; or
 - (ii) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to this Contract.
- (d) The consideration to be paid Contractor, as described within the Contract, shall be in full compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

21. Document Referencing

All correspondence, invoices, bills of lading, shipping memos, packages, etc., must show the Contract number. If factory shipment, the factory must be advised to comply. Invoices not properly identified with the Contract number and Contractor identification number may be returned to Contractor and may cause delay in payment.

22. Use of Data

Contractor shall not utilize any non-public CSU information it may receive by reason of this Contract, for pecuniary gain not contemplated by this Contract, regardless whether Contractor is or is not under contract at the time such gain is realized. CSU specific information contained in the report, survey, or other product developed by Contractor pursuant to this Contract is the property of CSU, and shall not be used in any manner by Contractor unless authorized in writing by CSU.

23. Confidentiality of Data

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- (a) Contractor acknowledges the privacy rights of individuals to their personal information that are expressed in the Information Practices Act (California Civil Code Section 1798 et seq.) and in California Constitution Article 1, Section 1. Contractor shall maintain the privacy of personal information and protected data as confidential information. Contractor shall not use, disclose, or release confidential information contained in CSU records without full compliance with applicable state and federal privacy laws, and this Contract. Contractor further acknowledges and agrees to comply with Federal privacy laws, such as the Gramm-Leach-Bliley Act (Title 15, United States Code, Sections 6801(b) and 6805(b)(2)) applicable to financial transactions, and the Family Educational Rights and Privacy Act (Title 20, United States Code, Section 1232g) applicable to student education records and information from student education records. Contractor shall maintain the privacy of confidential information and shall be financially responsible for any notifications to affected persons (after prompt consultation with CSU) whose personal information is disclosed by any security breach relating to confidential information resulting from Contractor's or its personnel's acts or omissions. Further, If so requested by CSU, Contractor shall be administratively responsible for providing such notification in the most expedient time possible consistent with the methods prescribed in California Civil Code 1798.29g and 1798.82g.
- (b) Contractor further agrees that all financial, statistical, personal, technical and other data and information relating to CSU's operation designated "confidential" by CSU, and not otherwise subject to disclosure under the California Public Records Act, and made available to Contractor to perform this Contract or which become available to Contractor while performing this Contract, shall be protected by Contractor using the same level of care it takes to protect its own information of a similar nature, but in no event less than reasonable care. If required by a court of competent jurisdiction or an appropriate administrative body with legal authority to order the disclosure of confidential information or protected data, Contractor will notify CSU in writing prior to any such disclosure to give CSU an opportunity to oppose any such disclosure. Prior to any disclosure of confidential information as required by legal process, Contractor shall: (1) Notify CSU of any actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure, immediately upon becoming so obligated; and
- (c) Contractor shall cooperate with any litigation or investigation proceedings concerning protected data loss or other breach of Contractor's obligations under this Contract. Any access, transmission, or storage of protected data outside the United States must be approved in writing by CSU in advance. Contractor's failure to comply with any provision of this Section shall constitute a material breach of the Contract.

24. Information Security Requirements

- (a) Contractor is required to comply with CSU Information Security Requirements as described in Rider A, Supplemental Provisions for General Provisions for Service Acquisitions, attached hereto and by reference made a part of this agreement.
- (b) Information Security Plan
Contractor is required to maintain an Information Security Plan sufficient to protect the sensitive and/or confidential CSU data to which they have access. Requirements for the Information Security Plan are described in Rider A.
- (c) Personal Security Requirements
Contractor shall require all its affiliates and subcontractors, as a condition to their engagement, to agree to be bound by provisions substantially the same as those included in this Agreement related to information security matters only. Contractor shall not knowingly permit a representative or subcontractor to have access to CSU records, confidential data, or premises of the CSU when such representative or subcontractor has been convicted of a felony.

25. Patent, Copyright, and Trade Secret Indemnity

- (a) Contractor shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University, CSU, and their respective officers, agents, and employees (collectively referred to as CSU), from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any Intellectual Property Right, domestic or foreign, by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to CSU, in addition to the foregoing provision, such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide CSU with indemnity protection.
 - (i) CSU will notify Contractor of such claim in writing and tender its defense within a reasonable time; and
 - (ii) Contractor will control the defense of any action on such claim and all negotiations for its settlement or compromise, except when substantial principles of government or public law are involved, when litigation might create precedent affecting future CSU operations or liability, or when involvement of the CSU is otherwise mandated by law. In such case no settlement shall be entered into on behalf of CSU without CSU's written approval.
- (b) Contractor may be required to furnish CSU a bond against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- (c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a Intellectual Property Right, whether domestic or foreign, CSU shall permit Contractor at its option and expense either to procure for CSU the right to continue using the Deliverables or

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Software or to replace or modify the same so they become non-infringing, provided they comply with Contract and performance requirements and/or expectations. If neither option can reasonably be practicable or if the use of such Deliverables or Software by CSU shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and use its best effort to assist CSU in procuring substitute Deliverables or Software at Contractor's cost and expense. If, in the sole opinion of CSU, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from Contractor under this Contract impracticable, CSU shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such Deliverables or Software and refund any sums CSU paid Contractor less any reasonable amount for use or damage.

- (d) Contractor certifies it has appropriate systems and controls in place to ensure 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.

26. Rights in Work Product

All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract, including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this section may be revised in a Statement of Work. The provisions of this sub-section a) may be revised in a Statement of Work. However, all finished product or deliverables required under this contract shall be the exclusive property of the CSU and may be used at CSU's discretion.

27. Examination and Audit

For contracts in excess of \$10,000, Contractor shall be subject to the examination and audit by

- (a) the Office of the University Auditor, and
(b) the Bureau of State Audits, for a period of three (3) years after final payment under the Contract. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the Contract. Note: Authority Cited: Government Code Section 8546.7; Education Code Section 89045(c&d), respectively.

28. Dispute

Any dispute arising under or resulting from this Contract that is not resolved within 60 days of time by authorized representatives of Contractor and CSU shall be brought to the attention of Contractor's Chief Executive Officer (or designee) and CSU's Chief Business Officer (or designee) for resolution. Either Contractor or CSU may request that the CSU Vice Chancellor, Business and Finance (or designee) participate in the dispute resolution process to provide advice regarding CSU contracting policies and procedures. If this informal dispute resolution process is unsuccessful, the parties may pursue all remedies not inconsistent with this Contract. Despite an unresolved dispute, Contractor shall continue without delay in performing its responsibilities under this Contract. Contractor shall accurately and adequately document all service it has performed under this Contract.

29. Conflict of Interest

CSU requires a Statement of Economic Interests (California Form 700) to be filed by any Consultant (or Contractor) who is involved in the making or participation in the making of decisions which may foreseeably have a material effect on any CSU financial interest.

30. Follow-On Contracts

No person, firm, or subsidiary thereof who has been awarded a contract for Consulting Services or providing Direction (as provided below) may submit be awarded a contract for the provision of services, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

- (a) If Contractor or its affiliates provides Consulting and Direction, Contractor and its affiliates:
- (i) shall not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for, or in connection with, any subject of such Consulting and Direction; and
 - (ii) shall not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Consulting and Direction, whichever is later.
- (b) "Consulting and Direction" means services for which Contractor received compensation from CSU and includes:
- (i) development of, or assistance in the development, of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of products or services; or

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- (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- (c) Except as prohibited by law, the restrictions of this Section will not apply:
 - (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where CSU has entered into a Contract for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- (d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

31. Endorsement

Nothing contained in this Contract shall be construed as conferring on any party, any right to use the other party's name as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other party. Furthermore nothing in this Contract shall be construed as endorsement of any commercial product or service by the CSU, its officers or employees.

32. Covenant Against Gratuities

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

33. Nondiscrimination

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

34. Compliance with NLRB Orders

Contractor declares under penalty of perjury under the laws of the State of California that no more than one final, unappeasable 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 to comply with an order of the National Labor Relations Board. Note: Cite Authority: PCC 10296

35. Drug-Free Workplace Certification

Contractor certifies that Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall 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 all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;

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- (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
- (c) Provide that every employee who works on the proposed or resulting Contract:
- (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract. Note: Authority Cited: Government Code Section 8350-8357

36. Forced, Convict, Indentured and Child Labor

By accepting a contract with CSU, Contractor:

- (a) certifies that no equipment, materials, or supplies furnished to CSU pursuant to this Contract have been 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. Contractor further certifies it will adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov/>, and Public Contract Code Section 6108.
- (b) agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (A).

37. Recycled Content Certification

To the extent that services involve the supply of post-consumer materials (see below) Contractor shall certify in writing the minimum, if not exact, percentage of post-consumer material, as defined in Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to CSU regardless whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).

38. Child Support Compliance Act

For any contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code Section 7110, that:

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

39. Americans With Disabilities Act (ADA)

Contractor warrants that it complies with California and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq). Contractor hereby warrants the products or services it will provide under this Contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless CSU from any claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of this Contract.

40. Debarment and Suspension

By accepting a contract with the CSU, Contractor certifies neither it nor its principals or its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency (2 Code Federal Regulations[CFR] 180.220, in accordance with the Office of Management and Budget guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235)).

41. Expatriate Corporations

Contractor declares and certifies that it is not an expatriate corporation, and is not precluded from contracting with CSU by The California Taxpayer and Shareholder Protection Act of 2003, Public Contract Code Section 10286, et seq.

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42. Citizenship and Public Benefits

If Contractor is a natural person, Contractor certifies he or she is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT.2105, 2268-69).

43. Loss Leader

Contractor certifies and declares it is not engaged in business within this State of California to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. Note: Authority Cite: (PCC 12104.5(b).)

44. DVBE and Small Business Participation

- (a) If Contractor has committed to achieve small business (SB) participation it shall, within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), report to CSU: (1) the name and address of the SB(s) who participated in the performance of the Contract; (2) the total amount the prime Contractor received under the Contract; and (3) the amount each SB received from the prime Contractor. (Govt. Code § 14841.)
- (b) If Contractor has committed to achieve disabled veteran business enterprise (DVBE) participation, it shall, within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), report to CSU:
- (1) the name and address of the DVBE(s) who participated in the performance of the Contract;
 - (2) the total amount the prime Contractor received under the Contract; and
 - (3) the amount each DVBE received from the prime Contractor. The Contractor shall also certify that all payments under the Contract have been made to the DVBE. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

45. Contractor's Staff

Contractor warrants that its staff assigned to performing work under this Contract are legally able to perform such duties in the country where the work is being performed.