

# ATTACHMENT I TERMS AND CONDITIONS

## **1. Definitions**

As used herein, the following terms shall have the following meanings unless otherwise required by the context:

**Bid** - Offer submitted in response to the Request for Bids, to furnish the goods or services described herein to the CGA, under the prescribed conditions at the stated prices;

**CGA** - Connecticut General Assembly;

**Commission** - Commission on Human Rights and Opportunities;

**Contract** - Agreement signed by parties to formalize the acceptance by the CGA of an offer of a Respondent to furnish the services described herein at the stated prices in response to the Request for Proposals;

**Contractor** - Party to the Contract with the CGA;

**JCLM** - Joint Committee on Legislative Management;

**Large State Contract** – Is defined in C.G.S. 4-250 (4), to mean “an agreement or a combination or series of agreements between a state agency or a quasi-public agency and a person, firm or corporation, having a total value of more than five hundred thousand dollars in a calendar or fiscal year, for (A) a project for the construction, alteration or repair of any public building or public work, (B) services, including, but not limited to, consulting and professional services, (C) the procurement of supplies, materials or equipment, (D) a lease, or (E) a licensing arrangement. The term "large state contract" shall not include a contract between a state agency or a quasi-public agency and a political subdivision of the state;”

**OLM** - Office of Legislative Management;

**Proposal** - Offer submitted in response to this Request for Proposals, to furnish the goods or services described herein to the CGA, under the prescribed conditions at the stated prices;

**Respondent** - Person, firm or corporation submitting a Proposal in response to a request for Proposals;

**RFB** - Request for Bid;

**RFP** - Request for Proposal;

**Solicitation** - Request for Bid or Request for Proposal;

**State** - The Connecticut General Assembly acting by and through the Executive Director of the Office of Legislative Management.

## **2. Contract Conditions**

### **2.1 Campaign Contribution Ban Acknowledgement (CCBA)**

With regard to a state Contract as defined in P.A. 07-01 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements of Contracts having a value of \$100,000 or more, the authorized signatory to this submission in Proposal or Bid to the CGA's solicitation shall submit the signed CCBA Form, included in this solicitation, which expressly

acknowledges receipt of the State Elections Enforcement Commissions' notice advising state Contractors of state campaign contributions and solicitation prohibitions, and that the Contractor will inform its principals of the contents of this notice.

### **2.2 Gift**

When the Contract has a value in a calendar year of \$50,000 or more or a combination or series of such agreements of Contracts having a value of \$100,000 or more Conn. Gen. Stat. § 4-252 (the "Statute") requires the RFP or RFB, of which these Terms and Conditions are a part, include a notice of the vendor certification requirements described in section (c) and (d) of the Statute. Accordingly, pursuant to the Statute, vendors are notified as follows:

1. The terms "gift," "quasi-public agency," "state agency," "large state contract," "principals and key personnel" and "participated substantially" as used in this section shall have the meanings set forth in the Statute.
2. The CGA shall not execute a large state Contract unless the CGA obtains the written certifications described in this section. Each such certification shall be sworn as true to the best knowledge and belief of the person signing the certification, subject to the penalties of false statement. These certifications are listed in the RFP.
3. The official of the person, firm or corporation awarded the Contract, who is authorized to execute the Contract, shall certify on such forms as the CGA shall provide:
  - (a) That no gifts were made between the date that the CGA began planning the project, services, procurement, lease or licensing arrangement covered by the Contract and the date of execution of the Contract, by (A) such person, firm, corporation, (B) any principals and key personnel of the person, firm or corporation, who participated substantially in preparing the Bid or Proposal or the negotiation of the Contract, or (C) any agent of such person, firm, corporation or principals and key personnel, who participated substantially in preparing the Bid or Proposal or the negotiation of the Contract, to (i) any public official or state employee of the CGA soliciting Bids or Proposals for the Contract, who participated substantially in the preparation of the RFP or RFB for the Contract or the negotiation or award of the Contract, or (ii) any public official or state employee of the CGA, who has supervisory or appointing authority over the CGA;
  - (b) That no such principals and key personnel of the person, firm or corporation, or agent of such person, firm or corporation or principals and key personnel, knows of any action by the person, firm or corporation to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the person, firm or corporation to provide a gift to any such public official or state employee; and
  - (c) That the person, firm or corporation made the Bid or Proposal without fraud or collusion with any person.

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- (d) Any Respondent that does not make the certifications required under subsection (c) of this section shall be disqualified and the CGA shall award the Contract to the next highest ranked Contractor or the next lowest responsible qualified Respondent or seek new Bids or Proposals.

### 2.3 Whistleblowing

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the CGA or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The CGA may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state Contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state Contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

### 2.4 Audit Requirements

For purposes of this paragraph, the word "Contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The Contractor shall provide for an annual financial audit acceptable to the Department for any expenditure of state-awarded funds made by the Contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The Contractor will comply with federal and state single audit standards as applicable.

Audit and Inspection of Plants, Places of Business and Records.

- (a) The CGA and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the CGA and its agents.
- (c) The CGA shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the CGA suspects fraud or other abuse, or in the event of an emergency, the CGA is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the CGA's expense.

- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The CGA may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the CGA and its agents in connection with an audit or inspection. Following any audit or inspection, the CGA may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any Contract or other agreement that it enters into with any Contractor Party.

### 2.5 Disclosure of Records

The Contract resulting from this solicitation may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each Contract in excess of two million five hundred thousand dollars between the CGA and a person for the performance of a governmental function shall (a) provide that the CGA is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the CGA pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the CGA in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

### 2.6 Forum and Choice of Law

The parties deem the Contract resulting from this solicitation to be made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the CGA, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut or the CGA. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

### 2.7 Tangible Personal Property

The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

- (a) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the CGA, Department of Revenue

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Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;

- (b) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
- (c) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
- (d) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
- (e) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the General Statutes.

1. For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in Section 12-1 of the General Statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
2. The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the CGA. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the CGA's contracting authority, such information as the CGA may require to ensure, in the CGA's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

### 2.8 Sovereign Immunity

The parties acknowledge and agree that nothing in the Solicitation or the Contract that results from this Solicitation shall be construed as a modification, compromise or waiver by the CGA or the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the CGA or the State of Connecticut or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

### 2.9 Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

### 2.10 Encryption of Data; Breach of Security or Loss

Contractor and Contractor Parties, at their own expense, shall encrypt any and all data which they come to possess or control, wherever and however stored or maintained, and which data CGA, at any time, classifies as confidential or restricted. The Contractor and Contractor Parties shall encrypt the data in accordance with the Connecticut Enterprise Architecture – Technology Architecture (CTEA-TA) protocols. The Contractor and Contractor Parties shall have a continuing obligation always to keep and maintain the data encryption consistent with CTEA-TA, as CTEA-TA may change from time to time.

- (a) The Contractor and Contractor Parties shall notify the CGA as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any and all data which Contractor has come to possess or control under subsection (a) above has been subject to a "data breach." For purposes of this Section, a "data breach" is an occurrence where (1) any or all of the data is misplaced, lost, stolen or in any way compromised; or (2) one or more third parties have had access to or taken control or possession of any or all of the data without prior written authorization from the CGA.
- (b) In addition to the notification requirements of subsection (b), should a data breach occur, the Contractor shall, within three (3) business days after the notification, present to the CGA, for review and approval, a credit monitoring or protection plan that the Contractor shall make available at its own cost and expense to all individuals affected by the data breach. Unless otherwise agreed to in writing by the CGA, such a plan shall be offered to each such individual free of charge and shall consist of, at a minimum, the following:
  1. Reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a;
  2. Credit monitoring services consisting of automatic daily monitoring of at least three (3) relevant credit bureau reports;
  3. Fraud resolution services, including writing dispute letters, initiating fraud alerts and security freezes, to assist affected individuals to bring matters to resolution; and
  4. Identity theft insurance with at least \$ 25,000.00 coverage.
  5. Such credit monitoring or protection plans shall cover a length of time commensurate with circumstances of the data breach, but under no circumstances shall the Contractor's credit monitoring and protection plan be for less than two (2) calendar years from the plan start date. The Contractors' costs and expenses for the credit monitoring and protection plan shall not

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be recoverable from the CGA or any State of Connecticut entity.

6. The Contractor represents and warrants that it shall obligate each Contractor Party in a written Contract to all of the terms of this Section just as if each Contractor Party had executed this Contract as an original signatory and each were bound by this Section to the same extent that the Contractor is bound.
7. The Contractor's or Contractor Parties' failure to encrypt the data, provide notice, or to provide the credit monitoring or protection plan shall be deemed to be, without more, a material breach of this Contract. The Contractor shall be responsible for any Contractor Parties breach as if the Contractor itself had breached the Contract. Consequently, and without otherwise limiting the rights of the CGA at law or in equity, the Contractor shall indemnify and hold harmless the CGA and the State, as appropriate, for any and all damages, costs and expenses associated directly or indirectly with Contractor's or Contractor Parties' breach. The damages, costs and expenses shall include, but not be limited to, those resulting from any corresponding Contracting for credit or identity protection services, or both, and from any subsequent non-State use of any data.

**2.11 Representations and Warranties**

The Contractor, awarded a Contract as a result of this solicitation represent and warrant to the CGA for itself, Contractor Parties and Bidder Parties, as appropriate, that:

- (a) the Contractor agree and hereby states that any findings, written documentation, and research performed in whole or in part in connection with this Contract shall be the sole property of the CGA and copies of all information and materials developed in connection with this Contract shall be provided to the CGA immediately upon completion or upon request by the CGA.
- (b) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Proposal and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
- (c) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the CGA under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 2 concerning CGA purchasing;
- (d) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other

instrument to which it is a party or by which it may be bound;

- (e) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (f) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;
- (g) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (h) they have not within the three years preceding the Contract had one or more Contracts with any governmental entity Terminated;
- (i) they have not employed or retained any entity or person, other than a bona fide employee working solely for **them**, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (j) to the best of their knowledge, there are no Claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (k) they shall disclose, to the best of their knowledge, to the CGA in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the CGA, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (l) their participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (m) the Bid or Proposal was not made in connection or concert with any other person, entity or Respondent, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Respondent, submitting a Bid or Proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud;

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- (n) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Respondent;
- (o) the Contractor shall obtain in a written Contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any Contracts and purchase orders with such Contractor Parties;
- (p) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (q) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (r) they owe no unemployment compensation contributions;
- (s) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (T) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (u) each Contractor Party or Bidder Party has vested in the Contractor and Bidder plenary authority to bind the Contractor Parties and Bidder Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from the CGA, such information as the CGA may require to evidence, in the CGA's sole determination, compliance with this section;
- (v) except to the extent modified or abrogated in the Contract, all Title shall pass to the CGA upon complete installation, testing and acceptance of the Goods or Services and payment by the CGA;
- (w) if either party Terminates the Contract, for any reason, the Contractor shall relinquish or cause to be relinquished to the CGA all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the CGA;
- (x) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (y) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without the CGA's prior written consent;
- (z) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (aa) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) the CGA 's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (cc) if they procure any Goods, they shall sub-license such Goods and that the CGA shall be afforded the full benefits of any manufacturer or Subcontractor licenses for the use of the Goods; and
- (dd) they shall assign or otherwise transfer to the CGA, or afford the CGA the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the CGA.

### **3. Formation of a Contract**

Upon acceptance of the Proposal, CGA will initiate the Contract process.

#### **3.1 Contract Creation**

This section serves as a notification to Contractor that:

- (a) the state's acceptance of the Contractor offer to furnish the services required in this solicitation shall result in a Contract between the Contractor and the CGA which shall bind the Contractor on his part to furnish and deliver said services at the prices specified in said Proposal or Bid, except as modified through negotiations between the CGA and the Contractor, and the CGA on its part to order from the Contractor, except for causes beyond reasonable control, and subject to the availability of appropriated funds, and to pay for at the Contract prices, the services provided for in this RFP or RFB; and
- (b) All the provisions of this solicitation shall be included in the terms and conditions of said Contract, except to the extent provided otherwise in an agreement executed by the CGA and the Contractor subsequent to the receipt of said Proposal by the CGA.

#### **3.2 Contract Execution**

The Contractor shall execute a formal Contract with the CGA for the complete performance specified therein. This Contract is considered executed once the Contract is signed by the Contractor and the CGA.

#### **3.3 Modification**

No alterations or variations of the terms of Contract shall be valid or binding upon the CGA unless made in writing and signed by the CGA.

#### **3.4 Transfer**

It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of his Contract or his right, title or interest therein, or his power to execute such Contract, to any other person, firm or corporation, without the previous written consent of the CGA. Any Subcontracting work done in regards to this Contract must be agreed to in writing by the CGA before the Contractor begins any work.

### **4 Contract Breach**

#### **4.1 Breach/Termination**

If either party breaches the Contract that results from this Solicitation in any respect, the non-breaching party shall provide written notice of the breach to the breaching party and afford the breaching party an opportunity to cure within ten (10) days from the date that the breaching party receives the notice. In the case of a Contractor breach, any other time period which the CGA sets forth in the notice shall trump the ten (10) days. The right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the

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nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Termination date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Contract Termination date, then the non-breaching party may Terminate the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If the CGA believes that the Contractor has not performed according to the Contract, the CGA may withhold payment in whole or in part pending resolution of the Performance issue, provided that the CGA notifies the Contractor in writing prior to the date that the payment would have been due.

### **4.2 Open Market Purchases**

Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for the Agency, if it deems it to be necessary or appropriate in its sole discretion, to Terminate the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in the Contract and the Contractor shall pay the Agency's invoice immediately after receiving the invoice. If the Agency does not Terminate the Contract, the Agency will deduct such open market purchases from the Contract quantities. However, if the Agency deems it to be in the best interest of the State, the Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Agency."

### **4.3 Rejection**

Any services rendered by the Contractor hereunder which fail in any way to meet the terms of the Contract are subject to rejection or payment on an adjusted price basis. The decision of the CGA shall be final.

### **4.4 Cancellation**

The CGA reserves the right to cancel this Contract within five days notice due to unsatisfactory performance. In the event that this is done, the Contractor will be paid for all the work performed or commodities provided up to the time of cancellation.

### **4.5 Termination**

Notwithstanding any provisions in the Contract resulting from this solicitation, the CGA, through a duly authorized employee, may Terminate the Contract whenever the CGA makes a written determination that such Termination is in the best interests of the CGA. The CGA shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.

(a) Notwithstanding any provisions in the Contract resulting from this solicitation, the CGA, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.

(b) The CGA shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the CGA for purposes of correspondence, or by hand delivery. Upon receiving the notice from the CGA, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the CGA all Records. The Records are deemed to be the property of the CGA and the Contractor shall deliver them to the CGA no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the CGA for the Records. The Contractor shall deliver those Records that exist in

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electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

(c) Upon receipt of a written notice of Termination from the CGA, the Contractor shall cease operations as the CGA directs in the notice, and take all actions that are necessary or appropriate, or that the CGA may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the CGA directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing Subcontracts and purchase orders and shall not enter into any further Subcontracts, purchase orders or commitments.

(d) The CGA shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the CGA, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the CGA is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the CGA, the Contractor shall assign to the CGA, or any replacement Contractor which the CGA designates, all Subcontracts, purchase orders and other commitments, deliver to the CGA all Records and other information pertaining to its Performance, and remove from CGA premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the CGA may request.

(e) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the CGA may Terminate the Contract that results from this solicitation in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.

(f) Upon Termination of the Contract that results from this solicitation, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.

(g) Termination of the Contract pursuant to this section shall not be deemed to be a breach of Contract by the CGA.

### **5. Renewal of Contract**

The CGA reserves the option to extend the contract for one additional year upon mutual agreement by the Contractor and the CGA. The CGA also reserves the right to renew this Contract under the conditions set forth in C.G.S. 2-71s or C.G.S. 2-71u of the Connecticut General Statutes, whichever is applicable

### **6. Accounting Records**

The Contractor, when under Contract, shall maintain adequate accounting records in accordance with all applicable state regulations in connection with this project and such records shall be made available for inspection by the CGA or other persons designated by the CGA. The Contractor shall make such accounts and records accessible to authorized state officials for the purpose of audit and examination. All records must be maintained for a minimum of three years after completion of the Contract.

### **7. Work Product**

All materials developed in conjunction with the Contract shall become the property of the CGA at no additional cost.

No report or document produced in whole or in part in connection with the Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

The Contractor, when under Contract, shall not use the name of the CGA for advertising or promotional purposes without prior permission in writing. The Contractor is allowed to use the CGA as a reference.

### **8. Contractor Guarantees**

- (a) The Contractor hereby agrees and guarantees to perform any Contract awarded in accordance with the specifications, terms and conditions contained in this RFP.
- (b) The Contractor shall indemnify, defend and hold harmless the CGA and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the CGA in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's Bid, Proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- (c) The Contractor shall not be responsible for indemnifying or holding the CGA harmless from any liability arising due to the negligence of the CGA or any other person or entity acting under the direct control or supervision of the CGA.
- (d) The Contractor shall reimburse the CGA for any and all damages to the real or personal property of the CGA caused by the Acts of the Contractor or any Contractor Parties. The CGA shall give the Contractor reasonable notice of any such Claims.
- (e) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the CGA is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (f) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the CGA as an additional insured on the policy and shall provide a copy of the policy to the CGA prior to the effective date of the Contract. The Contractor

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shall not begin Performance until the delivery of the policy to the CGA. The CGA shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the CGA or the State is contributorily negligent.

- (g) The rights provided in this section for the benefit of the CGA shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (h) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.
- (i) The Contractor shall be responsible for all injuries or damages to the Contractor's employees or agents incurred or sustained at the property while performing, or in any way associated with, their responsibilities as defined herein.
- (j) The CGA reserves the right to make a claim against the Professional Liability / Errors and Omissions Insurance policy when errors and/or omissions are present in any work completed by the Contractor for the CGA and which result in a financial impact on the CGA.

## **9. Freedom of Information**

### **9.1 Freedom of Information Act**

Due regard will be given to the protection of proprietary information contained in all Proposals or Bids received; however, Contractors should be aware that all materials associated with this procurement are subject to the terms of the Freedom of Information Act, the Privacy Act and all rules, regulations and interpretations resulting therefrom.

### **9.2 Proprietary Information**

It will not be sufficient for a Contractor to merely state generally that the Proposal or Bid is proprietary in nature and not therefore subject to release to third parties. Those particular pages or sections which a Contractor believes to be proprietary must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exception from release consistent with Section 1-210 of the Connecticut General Statutes must accompany the Proposal. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the above-cited statute.

### **9.3 Administrative Authority**

Between the Contractor and the CGA, the final administrative authority to release or exempt any or all material so identified rests with the CGA.

## **10. Human Rights and Opportunities**

### **10.1 Required Compliance with Human Rights and Opportunities Regulations**

Any Contractor must agree to comply with the statutes referred to in this section as they exist on the date of the Contract that results from this Solicitation and as they may be adopted or amended from time to time during the term of the Contract and any amendments thereto.

Incorporated by reference into this Contract are applicable provisions of the Connecticut General Statutes including but not limited to Sections 4a-60, 4a-60a, 46a-71(d), 46a-81i(d).

### **10.2 Nondiscrimination and Affirmative Action Provisions in contracts of the state and political subdivisions other than municipalities (Conn. Gen. Stat. 4a-60)**

Nondiscrimination.

- (a) For purposes of this Section, the following terms are defined as follows:
  1. "Commission" means the Commission on Human Rights and Opportunities;
  2. "Contract" and "contract" include any extension or modification of the Contract or contract;
  3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
  4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
  5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
  6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
  7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
  8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
  9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
  10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality

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for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a Contract where each Contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

- (b) (1) The Contractor agrees and warrants that in the performance of the Contract that results from this Solicitation such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other Contract or understanding and each vendor with which the Contractor has a Contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the Contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as Subcontractors and suppliers of materials on such public works projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and Subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every Subcontract or purchase order entered into in order to fulfill any obligation of a Contract with the State or CGA and such provisions shall be binding on a Subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such Subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the CGA and the CGA may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other Contract or understanding and each vendor with which such Contractor has a Contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission

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pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every Subcontract or purchase order entered into in order to fulfill any obligation of a Contract with the CGA and such provisions shall be binding on a Subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such Subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the CGA to enter into any such litigation or negotiation prior thereto to protect the interests of the CGA and the CGA may so enter.

### **10.3 Contracts of the state and political subdivisions, other than municipalities, to contain provisions re nondiscrimination on the basis of sexual orientation (Conn. Gen. Stat. 4a-60a)**

- (a) Every Contract to which the CGA is a party shall contain the following provisions:
1. The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
  2. The Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other Contract or understanding and each vendor with which such Contractor has a Contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
  3. The Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56;
  4. The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to

pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this section and section 46a-56.

- (b) The Contractor shall include the provisions of subsection (a) of this section in every Subcontract or purchase order entered into in order to fulfill any obligation of a Contract with the CGA and such provisions shall be binding on a Subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The Contractor shall take such action with respect to any such Subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the CGA and the CGA may so enter.

### **10.4 Discriminatory Practices by State Agencies (Conn. Gen. Stat. 46a-71(d))**

Every CGA Contract or Subcontract for construction on public buildings or for other public works or for goods and services shall conform to the intent of section 4a-60 and 4a-60a.

### **10.5 Sexual orientation discrimination: Services of state agencies.(Conn. Gen. Stat. 46a-81i(d))**

Every CGA Contract or Subcontract for construction on public buildings or for other public work or for goods and services shall conform to the intent of section 4a-60a.

### **10.6 Enforcement (Conn. Gen. Stat. 46a- 56(a))**

- (a) The commission shall:
1. Investigate the possibilities of affording equal opportunity of profitable employment to all persons, with particular reference to job training and placement;
  2. Compile facts concerning discrimination in employment, violations of civil liberties and other related matters;
  3. Investigate and proceed in all cases of discriminatory practices as provided in this chapter and noncompliance with the provisions of Sections 4a-60, 4a-60a and 46a-68c to 46a-68f, inclusive, of the Connecticut General Statutes;
  4. From time to time, but not less than once a year, report to the Governor as provided in Section 4a-60 of the Connecticut General Statutes, making recommendations for the removal of such injustices as it may find to exist and such other recommendations as it deems advisable and describing the investigations, proceedings and hearings it has conducted and their outcome, the decisions it has rendered and the other work it has performed;
  5. (Monitor CGA Contracts to determine whether they are in compliance with Sections 4a-60 and 4a-60a of the

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- Connecticut General Statutes and all other provisions of the General Statutes which prohibit discrimination; and
6. Compile data concerning CGA Contracts with female and minority business enterprises and submit a report annually to the General Assembly concerning the employment of such business enterprises as Contractor and Subcontractor.
- (b) The commission may, when it is deemed in the best interests of the State of Connecticut, exempt a Contractor from the requirements of complying with any or all of the provisions of Section 4a-60, 4a-60a, 46a-68c, 46a-68d or 46a-68e of the Connecticut General Statutes in any specific Contract. Exemptions under the provisions of this section may include, but not be limited to, the following instances: (1) If the work is to be or has been performed outside the State and no recruitment of workers within the limits of the State is involved; (2) those involving less than specified amounts of money or specified numbers of workers; (3) to the extent that they involve Subcontracts below a specified tier. The commission may also exempt facilities of a Contractor which are in all respects separate and distinct from activities of the Contractor related to the performance of the Contract, provided such an exemption shall not interfere with or impede the effectuation of the purposes of this section and Sections 4a-60, 4a-60a, 4a-60g, 4a-62 and 46a-68b to 46a-68k, inclusive, of the Connecticut General Statutes.
  - (c) If the commission determines through its complaint procedure that a Contractor or Subcontractor is not complying with anti-discrimination statutes or Contract provisions required under Sections 4a-60, 4a-60a, 46a-68c, 46a-68d, 46a-68e or 46a-68f of the Connecticut General Statutes, (A) the State shall retain two per cent of the total Contract price per month on any existing Contract with such Contractor and (B) the Contractor shall be prohibited from participation in any further Contracts with State agencies until: (i) the expiration of a period of two years from the date of the finding of noncompliance or (ii) the commission determines that the Contractor has adopted policies consistent with such statutes. The commission shall make such a determination as to whether the Contractor has adopted such policies within forty-five days of its determination of noncompliance. In addition, the commission may do one or more of the following: (1) publish or cause to be published, the names of Contractor or unions which it has found to be in noncompliance with such provisions; (2) notify the Attorney General that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the Contract provisions set forth in Sections 4a-60 or 4a-60a of the Connecticut General Statutes, appropriate proceedings should be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of said Sections 4a-60 or 4a-60a of the Connecticut General Statutes; (3) recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964, when necessary; (4) recommend to the appropriate prosecuting authority that criminal proceedings be brought for the furnishing of false information to any Contracting agency or to the commission as the case may be; (5) order the Contracting agency to refrain from entering into further Contracts, or extension or other modifications of existing Contracts, with any noncomplying Contractor, until such Contractor has satisfied the commission that such Contractor has established and will carry out personnel and employment policies in compliance with antidiscrimination statutes and provisions of Sections 4a-60, 4a-60a and 46a-68c to 46a-68f, inclusive, of the Connecticut General Statutes. The commission shall adopt regulations in accordance with Chapter 54 of the Connecticut General Statutes to implement the provisions of this section.
  - (d) If the commission determines through its complaint procedure and after a hearing held in accordance with Chapter 54 of the Connecticut General Statutes that, with respect to a state Contract, a Contractor, Subcontractor or supplier of materials has (1) fraudulently qualified as a minority business enterprise or (2) performed services or supplied materials on behalf of another Contractor, Subcontractor or supplier of materials knowing (A) that such other Contractor, Subcontractor or supplier has fraudulently qualified as a minority business enterprise in order to comply with antidiscrimination statutes or Contract provisions required under Section 4a-60 or 4a-60a of the Connecticut General Statutes, and (B) that such services or materials are to be used in connection with a Contract entered into pursuant to Section 4a-60g(b) of the Connecticut General Statutes it shall assess a civil penalty of not more than ten thousand dollars upon such Contractor, Subcontractor or supplier of materials. The Attorney General, upon complaint of the commission, shall institute a civil action in the superior court for the judicial district of Hartford to recover such penalty. Any penalties recovered shall be deposited in a special fund and shall be held by the Treasurer separate and apart from all other moneys, funds and accounts. The resources in such fund shall, pursuant to regulations adopted by the commission in accordance with the provisions of Chapter 54 of the Connecticut General Statutes, be used to assist minority business enterprises. As used in this section, "minority business enterprise" means any Contractor, Subcontractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise; (2) who have the power to direct the management and policies of the enterprise; and (3) who are members of a minority, as such term is defined in Section 32-9n(a) of the Connecticut General Statutes.

### **10.7 Contractor required to file compliance reports (C.G.S. 46a-68e)**

Each Contractor shall file, and shall cause each of his Contractor(s) to file, with the commission such compliance reports at such times as the commission may direct. Compliance reports shall contain such information as to the practices, policies, programs and employment policies, employment programs, and employment statistics of the Contractor and each Subcontractor and be in such form as the commission may prescribe.

### **10.8 Compliance reports to include labor union practices: (C.G.S. 46a-68f)**

Whenever the Contractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency

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referring workers or providing or supervising apprenticeship or training for such workers, the compliance report shall include information pertaining to such labor union's or agency's practices and policies affecting compliance, as the commission may prescribe; provided, to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency refuses to furnish information to the Contractor, the Contractor shall so certify to the commission as part of its compliance report and shall set forth what efforts have been made to obtain such information.

### **10.9 Labor Reporting**

The Contractor also agrees to make available to the State Department of Labor a listing of all available employment openings for the purpose of carrying out the terms of the Contract.

## **11. Restrictions on Communications**

### **11.1 Communications**

It is in the CGA's best interest to control the flow of information about the RFP or RFB. Great care should be taken about what is said about the RFP or RFB process and to whom. To ensure the equitable treatment of all prospective Contractors, each Contractor should receive the same, accurate, and authorized information throughout the RFP or RFB process – no more, no less.

### **11.2 Official Agency Contact**

The CGA shall designate one of its employees as the "Official Agency Contact" for purposes of the RFP or the RFB. The principal responsibility of the Official Agency Contact is to handle all communications with outside parties concerning the RFP or RFB. The Official Agency Contact also receives all Proposals or Bids submitted in response to the RFP or RFB and keeps them, unopened, in a secure location until the submission deadline. After the deadline has passed, the Official Agency Contact gives the Proposals or Bids to the Chair of the Evaluation Committee. Any Proposals or Bids received after the deadline must be retained, unopened, by the Official Agency Contact in a secure location. The Official Agency Contact should be someone who is "disinterested" (meaning, having no interest or involvement) in the RFP or RFB process, but who is knowledgeable about it. Having these qualities enables this person to speak for the CGA about the RFP or RFB when necessary, yet minimizes the possibility of this person influencing – however unintentionally – the outcome of the process. While appointing a "disinterested" Official Agency Contact is recommended, it may not always be feasible, particularly if an CGA has staff constraints. An acceptable alternative is for the Official Agency Contact to be someone who participated in writing the RFP or RFB or the evaluation plan. It is not permissible under any circumstances for the Official Agency Contact to be the Chair or a member of the Evaluation Committee.

### **11.3 ExParte Communications**

It is in the CGA's best interest to control the flow of information about the RFP or RFB. Great care must be taken about what is said by the CGA about the RFP or RFB and to whom. To ensure the equal treatment of all prospective Contractors, Contractors, and potential Contractors, all must have access to the same, accurate, and authorized information throughout the RFP or RFB process – no more, no less. Steps should be taken to prevent "ex parte communications." An ex parte communication is the transmission of information that is (1) not part of the public record

and (2) not generally available or shared with all participants of the RFP or RFB process. An ex parte communication about the RFP or RFB can potentially occur between any CGA employee and an outside party, including, but not limited to, prospective Contractors, Contractors, current Contractors, lobbyists, the media, legislators, CGA employees not participating in the RFP or RFB process, or employees of other State agencies. Except as permitted by the RFP or RFB document, communication between any CGA employee and an outside party about the RFP or RFB is strictly prohibited.

### **11.4 Communications Procedure**

The following guideline governs attempts by outside parties to communicate with the CGA about RFPs or RFBs.

The Official CGA Contact regarding this document is listed in section 1.3. It is the sole responsibility of the Official CGA Contact to handle communications about the RFP or RFB from prospective Contractors, Contractors, and other outside parties.

All others shall refrain from discussing the RFP or the RFB with outside parties and shall direct them to refer all communications from outside parties to the Official Agency Contact.

Upon receiving a referral, the Official Agency Contact must advise the outside party about the rules concerning ex parte communications and the CGA's established communication procedure for the RFP or RFB. The Official Agency Contact can provide only that information permitted by the RFP or RFB document to the outside party.

## **12. Executive Orders**

Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Department shall provide a copy of these orders to the Contractor.

## **13. Reserved Rights**

### **13.1 Amendment or withdrawal of Proposal**

The CGA reserves the right to amend and/or cancel this RFP at any time prior to the Proposal opening, and to correct any award erroneously made as a result of clerical error on the part of the CGA.

### **13.2 Refusal of Proposal**

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The CGA reserves the right to refuse any and all Proposals hereunder. The CGA may refuse any Proposal that does not meet the requirements outlined in the RFP.

**13.3 Public Inspection**

All Proposals are subject to public inspection upon award.

**13.4 Advertising**

No logos, advertising or proprietary information are allowed on products installed at the CGA Capitol Facilities.

**13.5 Disqualification for submitting Proposals 6.2.1  
Disqualification from submitting Proposals for Contracts.  
Suspension (C.G.S. 2-71r)**

- (a) The CGA may disqualify any person, firm or corporation, for up to two years, from submitting a Proposal or Bid for, applying for, or participating as a Subcontractor under Contracts with the legislative department, pursuant to Section 2-71p of the Connecticut General Statutes, for Contractual services required by the legislative department, for one or more causes set forth under subsection (c) of this section. The committee shall provide notice and an opportunity to be heard to the person, firm or corporation which is the subject of the proceeding. The committee shall issue a written decision within ninety days of the last date of such hearing and state in the decision the reasons for the action taken and, if the person, firm or corporation is being disqualified, the period of such disqualification. The committee shall send the decision to such person, firm or corporation by certified mail, return receipt requested. The written decision shall be a final decision for the purposes of sections 4-180 and 4-183 of the Connecticut General Statutes.
- (b) Before initiating such a proceeding or during the proceeding, the committee may suspend the person, firm or corporation from being considered for the awarding of such a Contract for such Contractual services, if the committee determines that there is probable cause for disqualification under section 7.2.1. No such suspension shall exceed three months. The committee may suspend such a person, firm or corporation only by issuing a written decision setting forth the reasons for, and the period of, the suspension. The committee shall send the decision to such person, firm or corporation by certified mail, return receipt requested.
- (c) Cause for disqualification or suspension from submitting Proposals or Bids shall include the following:
  - 1. Conviction or entry of a plea of guilty for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or Subcontract, or in the performance of such Contract or Subcontract;
  - 2. Conviction or entry of a plea of guilty under state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state Contractor(s);
  - 3. Conviction or entry of a plea of guilty under state or federal antitrust, collusion or conspiracy statutes arising out of the submission of Bids or Proposals;
  - 4. Noncompliance with Contract provisions, of a character regarded by the committee to be of such gravity as to indicate a lack of responsibility to perform as a state

Contractor(s), including deliberate failure, without good cause, to perform in accordance with specifications or time limits provided in a Contract;

- 5. Recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Contracts, unless such failure to perform or unsatisfactory performance was caused by acts beyond the control of the Contractor(s) or supplier; or
- 6. Any other cause the committee determines to be so serious or compelling as to affect responsibility as a state Contractor(s), including disqualification by another governmental entity, having caused financial loss to the state or having caused a serious delay or inability of state officials to carry out their duties on a past Contract or Contracts.

**13.6 Reduction of Disqualification Period**

The committee may reduce the period or extent of disqualification, upon the Contractor(s)'s request, supported by documentation, for the following reasons:

- (a) Newly discovered material evidence;
- (b) Reversal of the conviction upon which the disqualification was based;
- (c) Bona fide change in ownership or management;
- (d) Elimination of other causes for which the disqualification was imposed; or
- (e) Other reasons the committee deems appropriate.

**13.7 Disqualification Exception**

The committee may grant an exception permitting a disqualified Contractor(s) to participate in a particular Contract or Subcontract upon a written determination by the committee that there is good cause, in the interest of the public, for such action.