



OFFICE OF THE  
**UTAH STATE AUDITOR**

August 12, 2014

Dear Audit Firm:

Attached is a request for proposal for audit services for Dixie Applied Technology College for the year ending June 30, 2014 and the succeeding four years.

Your proposal must be submitted to Jon Johnson, Audit Director, Office of the Utah State Auditor, no later than 5:00 p.m. MDT on September 5, 2014 as indicated on page 1 of the Request for Proposal. Selection of the contractor will be made by September 18, 2014.

To be considered in the bidding process, the proposing independent auditing firm must meet the following minimum criteria:

1. The firm must meet the *Government Auditing Standards*' continuing professional education, independence, peer review, and licensing requirements.
2. The firm must have had significant experience in governmental auditing. The experience must have been on an entity-wide basis, and an opinion must have been issued.
3. The firm must be able to meet the reporting deadlines described in the Request for Proposal.

We look forward to working with you as we continue our commitment to quality audits in a timely and professional manner by utilizing the excellent services the auditing profession has to offer.

Sincerely,

Jon T. Johnson, CPA  
Audit Director  
801-538-1359  
jonjohnson@utah.gov

**REQUEST FOR PROPOSAL**  
***Financial Audit of DIXIE APPLIED TECHNOLOGY COLLEGE***  
OSA Solicitation No. 2014-DXA

**PURPOSE OF REQUEST FOR PROPOSAL**

The purpose of this request for proposal (RFP) is to enter into a contract with a qualified independent auditing firm (Contractor) to provide audit services. It is anticipated that this RFP may result in a contract award to a single contractor.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

**BACKGROUND**

The Office of the Utah State Auditor (OSA) is required by law (*Utah Code 67-3-1*) to audit or contract for the audit of:

Dixie Applied Technology College (Entity)  
1506 S. Silicon Way  
St. George, Utah 84770

This requirement includes a financial statement audit of the Entity in accordance with generally accepted auditing standards and *Government Auditing Standards*.

The Statewide Single Audit, including testwork applicable to the Entity, will be performed by the OSA in accordance with the Single Audit Act and OMB Circular A-133. No further Single Audit testwork will be required by the contractor. However, any federal program noncompliance over \$10,000 noted by the contractor should be communicated to the OSA.

Prior year financial statements for the Entity can be found on the OSA's website at:  
<http://auditor.utah.gov/accountability/search-audit-reports/>.

**SUBMITTING YOUR PROPOSAL**

NOTICE: By submitting a proposal in response to this RFP, the offeror is acknowledging that the requirements, scope of work, and evaluation process outlined in the RFP are fair, equitable, not unduly restrictive, understood, and agreed to. Any exceptions to the content of the RFP must be protested to the OSA prior to the closing date and time for submission of the proposal.

Proposals must be received by the submission deadline of September 5, 2014 no later than 5:00 p.m. MDT. Proposals received after the deadline will be late and ineligible for consideration.

**The preferred method of submitting your proposal is electronically in PDF format to:**  
[jonjohnson@utah.gov](mailto:jonjohnson@utah.gov). However, if you choose to submit hard copies, one original and three copies of your proposal must be submitted to the OSA at the address below:

Jon Johnson, Audit Director  
Office of the Utah State Auditor  
Utah State Capitol Complex  
East Office Building, Suite E310  
Salt Lake City, Utah, 84114-2310

Selection of the Contractor will be made by September 18, 2014, and all offerors submitting proposals will be notified immediately as to the selection results.

### **LENGTH OF CONTRACT**

The audit contract resulting from this RFP will cover the annual audits for each of the fiscal years ending June 30, 2014 through June 30, 2018, subject to an annual performance evaluation, legislative appropriation, and the needs of the Entity and the OSA.

The OSA reserves the right to review the contract on a regular basis regarding performance and cost analysis and may negotiate price and service elements during the term of the contract.

### **STANDARD CONTRACT TERMS AND CONDITIONS**

Any contract resulting from this RFP will include but not be limited to the Standard Terms and Conditions (see Attachment A). Exceptions and or additions to the Standard Terms and Conditions are strongly discouraged.

Exceptions and additions to the Standard Terms and Conditions must be submitted with the proposal response. Exceptions, additions, service level agreements, etc. submitted after the date and time for receipt of proposals will not be considered. Website URLs, or information on website URLs must not be requested in the RFP document and must not be submitted with a proposal. URLs provided with a proposal may result in that proposal being rejected as non-responsive. URLs are also prohibited from any language included in the final contract document.

The OSA retains the right to refuse to negotiate on exceptions should the exceptions be excessive or not in the best interest of the OSA, or if the negotiations could result in excessive costs to the OSA or could adversely impact existing time constraints.

Wherever the following terms appear in this solicitation or reference is made to them, they shall be interpreted according to the section of *Utah Code* indicated: bid, bidder, or quote as defined in 63G-6a-103(31); RFP, or Request for Proposals, as defined in 63G-6a-103(39). The procurement shall be conducted subject to the provisions of *Utah Code* 63G-6a-701-711.

All offerors should note that *Utah Code* 63G-6a-402(6) requires the issuing procurement unit, for the duration of any contract awarded through this RFP, to make available contact information of the winning contractor to the Department of Workforce Services (the department). In accordance with *Utah Code* 35A-2-203 (5)(b), "Information regarding job vacancies with private contractors that have contracted with an executive branch procurement unit shall be made available to the department for posting on the department's website by the department. Posted information shall include the name and contact information for job inquiries. This information shall be available for the duration of the contract." This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

### **DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION)**

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the OSA. However, the OSA may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offerors' expense.

## PROTECTED INFORMATION

The Government Records Access and Management Act (GRAMA), *Utah Code*, Subsection 63G-2-305, provides in part that:

*The following records are protected if properly classified by a government entity:*

- (1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret has provided the governmental entity with the information specified in Section [63G-2-309](#) (Business Confidentiality Claims);*
- (2) commercial information or non-individual financial information obtained from a person if:*
  - (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;*
  - (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and*
  - (c) the person submitting the information has provided the governmental entity with the information specified in Section [63G-2-309](#);*

\* \* \* \* \*

- (6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed; . . .*

GRAMA provides that trade secrets, commercial information or non-individual financial information may be protected by submitting a Claim of Business Confidentiality.

To protect information under a Claim of Business Confidentiality, the offeror must:

1. Provide a written Claim of Business Confidentiality *at the time the information (proposal) is provided to the OSA,*
2. Include a concise statement of reasons supporting the Claim of Business Confidentiality (Subsection 63G-2-309(1)), and
3. Submit an electronic “redacted” (excluding protected information) copy of your proposal response. Copy must clearly be marked “Redacted Version.”

A Claim of Business Confidentiality may be appropriate for information such as client lists and non-public financial statements. **Pricing and service elements may not be protected.** The Claim of Business Confidentiality must be submitted with your proposal on the form which may be accessed at:

<http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc>

**An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY” and may be considered non-responsive if marked as such.**

All materials submitted become the property of the OSA. Materials may be evaluated by anyone designated by the OSA as part of the proposal evaluation committee. Materials submitted may be returned only at the OSA's option.

## **DETAILED SCOPE OF WORK**

### **A. AUDIT STANDARDS**

The auditor shall perform a financial audit of the Entity for each fiscal year of the contract period in accordance with the following:

- Auditing standards generally accepted in the United States of America, as promulgated by the American Institute of Certified Public Accountants (AICPA).
- *Government Auditing Standards*, 2011 revision, published by the U.S. Government Accountability Office.

### **B. REPORTING REQUIREMENTS**

1. Financial Report – The auditor shall audit the financial statements and records of the Entity and shall issue an auditor's opinion on those financial statements. Such financial statements shall be prepared in conformity with accounting principles generally accepted in the United States of America.
2. Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters – The auditor shall issue a report on internal control over financial reporting and on compliance and other matters in accordance with *Government Auditing Standards*.
3. Management Letter – As appropriate, the auditor shall prepare a comprehensive management letter including the auditor's findings and recommendations relative to the internal control over financial reporting, compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles.

The auditor shall request written responses from Entity officials for each recommendation and shall include such responses in the report or management letter. If the Entity declines the opportunity to respond, the auditor shall so state in his report.

4. Reporting Deadlines – Audit reports must be delivered to the OSA and the Entity by December 15 following each fiscal year end. The deadlines are critical since the Entity is being summarized and included in statewide reports.

## **PROPOSAL REQUIREMENTS**

Interested offerors should include the following information in their proposal to perform the audits.

### **A. Profile of the Independent Auditor**

Provide general background information which includes:

1. The organization and size of the offeror, whether it is local, regional, national or international in operations.
2. The location of the office from which the work is to be done and the number of professional staff, by staff level, employed at that office.
3. A positive statement that the following mandatory criteria are satisfied:
  - (a) An affirmation that the offeror is properly licensed for practice as a certified public accountant in the State of Utah.
  - (b) An affirmation that the offeror meets the independence requirements of AICPA Rule 101 and the *Government Auditing Standards*.
  - (c) An affirmation that the offeror meets the continuing professional education requirements contained in the *Government Auditing Standards*.
4. A copy of the offeror's most recent peer review report.

### **B. Offeror's Qualifications**

1. Identify the audit partners, audit managers, field supervisors and other staff who will work on the audit, including staff from other than the local office. Resumes should be included which outline relevant government audit experience and continuing professional education for the staff auditors up to the individual with final responsibility for the engagement.
2. Describe the recent local office auditing experience similar to the type of audit requested.
3. If other auditors are to participate in the audit, those auditors should be required to provide similar information.

### **C. Offeror's Approach to the Engagement**

Submit a general audit work plan to accomplish the scope defined in these guidelines. The audit work plan should demonstrate the offeror's understanding of the audit requirements and the audit tests and procedures to be applied in completing the audit plan. The plan should detail the expected number of audit hours, on an annual basis, for each fiscal year being audited. The plan should also identify the breakdown of total hours between staff, in-charges, and higher levels. The planned use of specialists, if any, should also be specified.

### **D. Time Requirements**

Detail how the reporting deadline requirements of the audit will be met.

E. Comprehensive Not-To-Exceed Fee

Supply the billing rates, estimated number of billable hours, other billable expenses and a comprehensive "not-to-exceed" fee for the financial audit, inclusive of travel, per diem and all other out-of-pocket expenses. The not-to-exceed fee information requested above should be provided as a separate amount for **each fiscal year being audited.**

**CONTRACTUAL ARRANGEMENTS**

A. Significant Contract Provisions

As part of the contract to be awarded, the Contractor will be required to:

1. Deliver two hard copies and an electronic copy of all reports to the OSA and up to fifty copies to the Entity.
2. Make available all working papers, audit programs, and time control records associated with the audit during performance of the audit and/or at the completion of the audit for review by the OSA and for a verification of key personnel obligated in the proposal, or other reasonable and valid purposes.
3. Retain all working papers and reports for a minimum of five years from the audit report release date in accordance with AICPA AU-C 230.17, and make all working papers and reports available for inspection by the Entity or the OSA upon request.
4. Immediately inform the OSA regarding any indication of errors, irregularities or illegal acts that may come to their attention in connection with the audit.
5. Notify the OSA, in advance, of all opening and exit conferences between the Entity and the Contractor, as well as all significant conferences concerning audit exceptions, accounting issues, internal control findings, or scope limitations. An exit conference between the Entity and the Contractor shall be required.
6. Notify the OSA, in writing, prior to entering into a contract for auditing or non-auditing engagements with the Entity or any other State agency, department, or division.
7. Notify the OSA, in writing, prior to changes of partner, manager, supervisor, or senior personnel obligated in the bid proposal.

B. Compensation for Services

1. Billings for audit services are to be sent directly to the OSA.
2. Separate progress billings are allowed for time and expense incurred during the audit with the stipulation that progress billings cannot exceed 75% of the fees stated above. A statement of the current and cumulative hours incurred shall be submitted with each billing.
3. Final payment for audit services shall be made by the OSA upon completion of the audit, receipt of the required reports and any other information requested by the OSA, completion of a review of the working papers by the OSA where deemed necessary, and receipt of a statement of actual hours incurred and final billings.
4. Payments by the OSA are expressly subject to legislative appropriation therefore, and in the absence thereof, the agreement may be terminated.

## **EVALUATION OF PROPOSALS**

A committee will evaluate proposals against the following weighted criteria:

% OF SCORING WEIGHT	EVALUATION CRITERIA
Mandatory	Licensing, independence, CPE, peer review, and ability to meet audit deadlines.
20%	<u>Technical Experience of the Independent Auditing Firm</u> – Considering governmental audit experience, as well as size and structure of the firm.
20%	<u>Qualifications of Staff</u>
25%	<u>Responsiveness of the proposal</u> in clearly stating an understanding of the audit services to be performed: (1) Appropriateness and adequacy of proposed procedures. (2) Reasonableness of time estimates and total audit hours. (3) Appropriateness of assigned staff levels.
35%	<u>Cost of the Audit</u>

Right to Reject – The OSA reserves the right to reject any and all proposals submitted and to request additional information from all proposing firms. Any contract awarded will be made to the independent auditing firm who, based on evaluation of all responses (applying all criteria and oral interviews if necessary), is determined to be the best to perform the audit. The OSA will reject any proposal with a cost in excess of the fully-burdened cost for the OSA to perform the audit.

## **ADDITIONAL INFORMATION**

The individuals listed below may be contacted for information. However, before making contact we request you review the Entity's prior year financial statements and auditor's reports which can be found on the OSA's website at: <http://auditor.utah.gov/accountability/search-audit-reports/>.

### Office of the State Auditor:

Jon Johnson, Audit Director  
Phone: 801-538-1359  
Email: jonjohnson@utah.gov

### Dixie Applied Technology College:

Eric Grob, Vice President of Finance  
Phone: 435-674-8404  
Email: grob@dxatc.edu

**ATTACHMENT A**  
**STATE OF UTAH TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**  
**(with deletions/additions by the Office of the Utah State Auditor for items specific to this contract)**

1. **AUTHORITY:** Provisions of this contract ("Contract") are pursuant to the authority set forth in 63G-6a, Utah Code, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The person or entity contracting with the State under this Contract ("Contractor") and any and all supplies, services, equipment, and construction furnished under this Contract will comply fully with all applicable Federal, and State, and local laws, codes, rules, regulations, and ordinances, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to the Contractor for costs authorized by this Contract. These records shall be retained by the Contractor for at least ~~four~~ [five] years after the Contract terminates, or until all audits initiated within the ~~four~~ [five] years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency staff, access to all the records to this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment. [Furthermore, AICPA AU-C 230.17 requires all audit documentation to be retained for at least five years after the report release date.]
5. **TIME:** The Contractor shall complete the scope of services work in a manner to achieve any milestones identified in the procurement documents related to this Contract and the attachments to this Contract. The full scope of services work shall be completed by any applicable deadline stated in the solicitation.
6. **TIME IS OF THE ESSENCE:** For all work and services under this Contract, time is of the essence and Contractor shall be liable for all damages to the State of Utah and anyone for whom the State of Utah may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
7. **PAYMENT:**
  - 7.1 Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.
  - 7.2 The contract total may be changed only by written amendment executed by authorized personnel of the parties. Unless otherwise stated in the Contract, all payments to the Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's purchasing card (major credit card).
  - 7.3 The acceptance by the Contractor of final payment without a written protest filed with the State within 10 working days of receipt of final payment shall release the State from all claims and all liability to the Contractor for fees and costs of the performance of the services pursuant to this Contract.
8. **PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
9. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
10. **DOCUMENT OWNERSHIP:** Contractor agrees that any work/services and all Deliverables prepared for State, to the extent to which it is eligible under copyright law in any county, shall be deemed a work made for hire, such that all right, title and interest in the work and Deliverables reside with the State. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to the State. Contractor further agrees to provide all assistance reasonably requested by State in the establishment, preservation and enforcement of its rights in such work and deliverables, or subsequent amendments or modifications to such work and deliverables, without any additional compensation to Contractor. Contractor agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and deliverables, or subsequent amendments or modifications to such work and deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use.
11. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify," only applies to contracts issued through a Request for Proposal process, and to sole

sources that are included within a Request for Proposal. It does not apply to other types of procurement processes, including but not limited to Invitation to Bids or to Multiple Stage Bids.

### **11.1 Status Verification System**

(1) Contractor certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302.

(2) The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

(3) The State will not consider a proposal for award, nor will it make any award, where there has not been compliance with this Section.

(4) Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including Utah Code Ann. Section 63G-12-302.

### **11.2 Indemnity Clause for Status Verification System**

Contractor (includes, but is not limited to any Contractor or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (1) Contractor; (2) Contractor's subcontractor or subconsultant at any tier; and/or (3) any entity or person for whom the Contractor or Subcontractor may be liable.

- 12. CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with Section 67-16-7, Utah Code, as amended. Contractor also represents that it has no conflict of interest in performing the services for the State under this Contract, unless such conflict of interest has been disclosed to the State and approval to proceed, notwithstanding the conflict, has been obtained from the State in writing.
- 13. CONTRACTOR AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and Social Security amounts due as a result of payments received from the State for these Contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
- 14. INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all claims, loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Contract which are caused in whole or in part by the acts or negligence of (1) the Contractor, (2) the Contractor's officers, agents, volunteers, or employees, (3) the Contractor's subcontractors or subconsultants at any tier, or (4) anyone for whom Contractor may be liable but not for claims arising from the State's sole negligence. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.
- 15. EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place. Contractor also agrees to abide by any laws and policies of the State of Utah regarding any of the above mentioned prohibitions in this paragraph.
- 16. PERFORMANCE EVALUATION:** The State of Utah may conduct a performance evaluation of the Contractor's services, including specific personnel of the Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to the Contractor.
- 17. WAIVERS:** No waiver by the State or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default.
- 18. SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

- 19. RENEGOTIATION OR MODIFICATIONS:** This Contract may be amended, modified, or supplemented only by written amendment to this Contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.
- 20. SUSPENSION/DEBARMENT:** The Contractor certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract), by any governmental department or agency in the United States, including any federal, state or local agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing [and the OSA] within 30 days if suspended or debarred by any governmental entity during the Contract period.
- 21. TERMINATION:**
- 21.1** Unless otherwise stated in the Additional Terms and Conditions of the State of Utah, if applicable, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given 10 working days after notification to correct and cease the violations, after which this Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 60 days prior written notice being given to the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
- 21.2** In the event of such termination, the Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of the Contractor having to terminate contracts necessarily and appropriately entered into by the Contractor pursuant to this Contract. Contractor further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Contractor under this Contract up to the date of termination are the property of the State and shall be promptly delivered to the State.
- 22. INSURANCE:**
- 22.1** To protect against liability, loss and/or expense in connection with the performance of services described under this Contract, the Contractor shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah. If the solicitation document has qualification requirements for the financial stability of the insurance company, these requirements must be met.
- 22.2** The following are minimum coverages that may be supplemented by additional requirements contained in the solicitation for this Contract or provided in an Attachment to this Contract:
- (1) Worker's Compensation Insurance and Employers' Liability Insurance. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction.
- (2) General Liability Insurance. Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to State and must add State as an additional insured with notice of cancellation.
- (3) Professional liability insurance in the amount as described in the solicitation for this Contract, if applicable.
- (4) Any other insurance described in the solicitation for this Contract, if applicable.
- 22.3** Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
- 22.4** The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.
- 23. STANDARD OF CARE:** The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract. The Contractor shall be liable to the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors or omissions that do not meet this standard of care.
- 24. STATE REVIEWS, LIMITATIONS:** The right of the State to perform plan checks, plan reviews, other reviews and/or comment upon the services of the Contractor, as well as any approval by the State, shall not be construed as relieving the Contractor from its professional and legal responsibility for services required under this Contract. No review by the State or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by the State of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the wrongful acts, errors and/or omissions of the Contractor or its subcontractors or subconsultants at any tier, if any.

**25. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:**

**25.1** Upon 30 days written notice delivered to the Contractor, this contract may be terminated in whole or in part at the sole discretion of the State, if the State reasonably determines that a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of the contract.

**25.2** Upon 30 days written notice delivered to the Contractor, this contract may be terminated in whole or in part, or have the services and purchase obligations of the State proportionately reduced, at the sole discretion of the State, if the State reasonably determines that a change in available funds affects the State's ability to pay under the contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

**25.3** If a notice is delivered under paragraph 1 or 2 of this Section 25 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," the State will reimburse the Contractor for products properly delivered or services properly performed up until the effective date of said notice. The State will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said notice.

**25.4** Notwithstanding any other paragraph or provision of this Section 25 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," if the State in said notice to the Contractor indicates that the Contractor is to immediately cease from placing any orders or commitments with suppliers, subcontractor or other third parties, the Contractor shall immediately cease such orders or commitments upon receipt of said notice and the State shall not be liable for any such orders or commitments made after the receipt of said notice.

**26. SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the Contract.

**27. PUBLIC INFORMATION:** Contractor agrees that this Contract, related sales orders, and invoices shall be public documents, and shall be available for distribution. Contractor gives the State express permission to make copies of this Contract, related sales orders, and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation, if applicable, will be a public document, and copies may be given to the public under GRAMA laws. This permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

**28. PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract.

**29. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the State.

**30. DEFAULT AND REMEDIES:**

**30.1** Any of the following events will constitute cause for the State to declare Contractor in default of this Contract:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Contract.

**30.2** Should Contractor be in default under any of the provisions under Subsection 30.1 above, the State will issue a written notice of default providing a 10 day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State may do one or more of the following: (1) Exercise any remedy provided by law; (2) Terminate this Contract and any related contracts or portions thereof; (3) Impose liquidated damages, if liquidated damages are listed in the Contract; or (4) Suspend Contractor from receiving future solicitations.

**31. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.

**32. CONFIDENTIALITY:** Contractor, and anyone for whom the Contractor may be liable, must maintain the confidentiality of any non-public personal information. Personal information includes, but is not limited to, names, social security numbers, birth dates, address, credit card numbers and financial account numbers. The State reserves the right to identify additional reasonable types or categories of information that must be kept confidential by the Contractor and anyone for whom the Contractor may be liable. This duty of confidentiality shall be ongoing and survive the term of this contract.

**33. PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2404, Utah Code, as amended).

- 34. CONFLICT OF TERMS:** In order for any terms and conditions of the Contractor to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of the Contractor will apply to this Contract, including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the terms and conditions in the Contract, the order of precedence shall be: (1) Attachment A: State of Utah Terms and Conditions for Professional Services; (2) State of Utah Contract Signature Page(s); (3) Additional Terms and Conditions of the State of Utah; (4) Terms and Conditions of the Contractor, if any.
- 35. ENTIRE CONTRACT:** This Contract including all attachments and documents incorporated hereunder, and the related State solicitation documents, if any, constitutes the entire Contract between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Contract shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Contract shall prevail in any dispute between the terms of this Contract and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Contract.
- 36. DISPUTE RESOLUTION:** In the event of any dispute under this Contract prior to any filing in any judicial proceedings, the parties agree to participate in good faith in the mediation of the dispute. The State, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of the dispute. If the State appoints such an expert or panel, State and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

(Revision date: 21 May 2014)  
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