



OFFICE OF THE
UTAH STATE AUDITOR

May 17, 2021

Dear Audit Firm:

Attached is a request for proposal for audit services for the Utah Communications Authority (UCA) for the years ending June 30, 2021 through June 30, 2025.

Your proposal must be submitted to Jason Allen, Audit Director, Office of the State Auditor, no later than 5:00 pm MDT on June 4, 2021 as indicated on page 1 of the Request for Proposal. Selection of the contractor is anticipated to be made by June 11, 2021 and will be posted on the contracting page of our website at auditor.utah.gov/about-us/contracting/.

To be considered in the solicitation 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. The firm's most recent peer review report must be submitted as part of the proposal.
2. The firm must have 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 have no other business, contractual, or other connection to UCA.
4. 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,

Jason Allen, CPA, CFE
Audit Director
801-808-0716
jasonallen@utah.gov

REQUEST FOR PROPOSAL UTAH COMMUNICATIONS AUTHORITY

OSA Solicitation No. 2021-UCA

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 for the Utah Communications Authority (Entity).

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 State Auditor (OSA) is required by law (*Utah Code 67-3-1*) to superintend the audit of the Utah Communications Authority.

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

Depending on the levels of federal funding, the Entity may require a Single Audit in accordance with the Single Audit Act and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the related OMB Compliance Supplement. **This RFP does not anticipate that a Single Audit will be required** and the RFP response should not address the potential costs for a Single Audit. Should a Single Audit be required, the audit contract will be amended. **Offerors should, however, address their qualifications to perform a single audit.**

For an overview and background information regarding the Entity, see Appendix B of this RFP. Prior year financial reports for the Entity can be found on the OSA website at reporting.auditor.utah.gov/searchreport.

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 June 4, 2021 no later than 5:00 pm 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: jasonallen@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 shown below:

Jason Allen, CPA, CFE, Audit Director
Office of the State Auditor
Utah State Capitol Complex
East Office Building, Suite E310
Salt Lake City, Utah, 84114-2310

Selection of the Contractor is anticipated to be made by June 11, 2021. Announcement of the awarded contract will be posted to the OSA website at auditor.utah.gov/about-us/contracting/.

LENGTH OF CONTRACT

The audit contract resulting from this RFP will cover the annual audits for each of the fiscal years ending June 30, 2021 through June 30, 2025, 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. The OSA will also consult with the Entity's Audit Committee regarding these reviews.

STANDARD CONTRACT TERMS AND CONDITIONS

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

Exceptions and additions to the Terms and Conditions must be submitted with the proposal. 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.

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.

QUESTIONS AND ANSWERS

Questions arising subsequent to the issuance of this RFP, that could have a significant impact on the responses to the RFP, should be submitted via email to Jason Allen (jasonallen@utah.gov) referencing OSA Solicitation #2021-UCA. The submitted questions and associated answers will be posted on the OSA website at auditor.utah.gov/about-us/contracting/. All such questions should be received by the **Questions Due Date of May 26, 2021** and responses, if any, will be posted by May 28, 2021.

DETAILED SCOPE OF WORK

A. REPORTING REQUIREMENTS

The Contractor shall perform the following engagements for the Entity for each fiscal year ending June 30, 2021 through June 30, 2025 as follows:

1. Entrance and Exit Conferences – the Contractor will, prior to beginning audit work, meet with each Entity’s executive director, business officer, and the deputy director/general counsel to discuss the approach for the audit, timing of work, items to be provided by the Entity’s management, and any new accounting issues expected for the year. New accounting issues will be discussed separately and in advance of the entrance conference with Patsy Halladay, CFO/Director of Administrative Services. The entrance conference can be held as one meeting with all Entities present. An exit conference will be held no later than January 30th of each year with each Entity’s management and the Board of Directors to discuss any findings or issues that arose during the audit.
2. Financial Reports – For each fiscal year ending June 30, 2021 through June 30, 2025, the Contractor shall audit the financial statements and records of the Entity and shall issue an auditor’s opinion on those financial statements. Such opinion shall be prepared in conformity with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*.
3. Independent Auditor’s Report on Internal Control Over Financial Reporting and on Compliance and Other Matters – The Contractor shall issue a report on internal control over financial reporting and on compliance and other matters in accordance with Government Auditing Standards.

The following have been determined to be significant compliance requirements by the OSA and should be considered in determining the Entity’s compliance with applicable laws and regulations:

- *Utah Code 63H-7a-803(2)* requires the Entity’s Board of Directors to adopt budgetary procedures, accounting, and personnel and human resource policies substantially similar to those noted in 63H-7a-803(1), and 63H-7a-804(2) requires that the annual audit determine whether the Board has complied with the requirements found in 63H-7a-803(2).
- *Utah Code 52-4 Open and Public Meetings Act* (See the OSA’s State Compliance Audit Guide at resources.auditor.utah.gov/s/article/Forms-Manuals-Guides for suggested audit procedures.)

Note: The items listed above are not intended to be a complete listing of compliance requirements that could be direct and material to the financial statements. The auditor should use appropriate audit procedures, such as inquiry with management, review of minutes, and other procedures as considered necessary to identify the compliance requirements that should be tested as part of the financial audit (see AU-C 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*).

4. Management Letter – As appropriate, the Contractor shall prepare a comprehensive management letter which includes the audit 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 Contractor 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 Contractor shall so state in their report.

5. Reporting Deadlines —the annual financial audits must be completed and the reports submitted by the following dates:

- Fiscal Year 2021 by December 31, 2021.
- Fiscal Years 2022–2025 by December 31st following the fiscal year being audited.

B. OTHER INFORMATION

The Utah Communications Authority implemented a new cloud-based accounting system (NetSuite) at the beginning of fiscal year 2021.

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 of the Offeror, including:
 - a. The date established or year of organization;
 - b. The size of the Offeror and whether it is local, regional, national or international in operations; and
 - c. Ownership (public company, subsidiary, etc.)
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 the AICPA Code of Professional Conduct and the Government Auditing Standards.
 - c. An affirmation that the Offeror meets 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

The Offeror must include the following information in their proposal:

1. Verification that the Offeror has at least 5 years of experience as a certified public accountant (CPA). The Offeror must have a current Utah CPA license and maintain that license during the course of the contract. The OSA will verify licensure prior to contract execution. Utah CPA license numbers must be provided for all staff involved with or assigned to this engagement.

2. 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. Résumés should be included which outline relevant experience and continuing professional education for the staff auditors up to the individual with final responsibility for the engagement.
3. Describe the recent local office auditing experience similar to the type of audit requested. As noted in the Background section on page 1 of this RFP, include single audit experience in the event a Single Audit is needed.
4. If other auditors are to participate in the audit, those auditors should be required to provide similar information.
5. Certification that neither it nor any proposed subcontractors have:
 - a. Any affiliations with person(s) recognized by law enforcement officers as being habitual criminals or members of criminal cartels.
 - b. Any convictions or judgements (civil or criminal) for fraud, deceit, or crimes involving moral turpitude.
 - c. A petition under the Bankruptcy Act, or any State insolvency law, filed by or against any of the named.
 - d. Any order, judgment, or decree of any federal or State authority barring, suspending or otherwise limiting the right or license of the Offeror to engage in any business practice or activity.

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 must detail the expected number of audit hours, on an annual basis, for each fiscal year being audited. The plan must 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. However, do not include hours required for a Single Audit in this analysis.

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

CONTRACTUAL ARRANGEMENTS

A. 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 the OSA's review of the reports and any work papers deemed necessary, and receipt of a statement of actual hours incurred and a final billing statement.

B. Significant Contract Provisions

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

1. Retain all work papers and reports for a minimum of six years from the audit report release date, and make available all work 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. **The Contractor will be subject to the OSA work paper review process. The results of that review will be added to the OSA website.** In addition, all work papers will be subject to disclosure under the Government Records and Management Act, Section 63G-2 of the Utah Code, as if they were OSA records.
2. Immediately inform both the OSA and the Entity's Audit Committee regarding any indication of fraud, errors, or illegal acts that may come to their attention in connection with the audit.
3. 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. The Contractor must hold an exit conference with the Entity.
4. Refrain from assigning, subcontracting, or delegating any portion of the audit without prior written authorization by the OSA.
5. 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.
6. Strive to have continuity in audit staff from year to year. The Contractor further, in accordance with generally accepted auditing standards, shall assure staff have the appropriate skills and experience and are trained, supervised, and competent to do the work.
7. Notify the OSA, in writing, prior to changes of partner, manager, supervisor or senior personnel obligated in the proposal.

8. Provide the Entity with Letters of Engagement in accordance with professional standards to specify the responsibilities of the Contractor and the Entity as they relate to the conduct of the audits. The terms of the Letters of Engagement shall be consistent with the terms of the Contract. In the event there are inconsistencies, the terms of the Contract shall govern and control. Copies of the Letters of Engagement must be sent to the OSA.
9. Carry and maintain liability insurance, add the State of Utah as an additional insured, and provide proof of this insurance to the OSA, as required by No. 16 of the Terms and Conditions for Services (Attachment A).

EVALUATION OF PROPOSALS

Best and final offers may be allowed as provided in *Utah Code 63G-6a-707.5* from responsible offerors who submit responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP. A committee will evaluate proposals against the following weighted criteria:

% OF SCORING WEIGHT	EVALUATION CRITERIA
Mandatory	Licensing, independence, CPE, peer review, expected audit hours by staffing levels, and ability to meet audit deadlines.
20%	<u>Technical Experience of the Independent Auditing Firm</u> – Considering 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.

CONTACT INFORMATION

The individuals listed below may be contacted for information. Questions related to this RFP must be submitted to Jason Allen, Audit Director, as outlined in the QUESTIONS AND ANSWERS section above. 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

auditor.utah.gov, specifically at the following link: auditor.utah.gov/audit_reports/search-audit-reports/.

OSA:

Jason Allen, CPA, CFE, Audit Director
Phone: 801-808-0716
Email: jasonallen@utah.gov

The Entity:

Patsy Halladay, CFO/Director of Administrative Services
Utah Communications Authority
5215 Wiley Post Way, Ste 550
Salt Lake City, Utah 84116
Phone: 801-840-4206
Email: phalladay@uca911.org

**STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES
(with changes by the Office of the State Auditor (OSA) for items specific to this contract)**

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The OSA reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the OSA and Contractor sign.
 - d) **"Contractor"** means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, partners, and principals.
 - e) **"Services"** means the furnishing of audit services pursuant to this Contract.
 - f) **"Proposal"** means Contractor's response to the OSA's Solicitation.
 - g) **"Solicitation"** means the documents used by the OSA to obtain Contractor's Proposal.
 - h) **"OSA"** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - i) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - j) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - k) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the OSA. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any OSA intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property. It is also understood that all workpapers produced and/or compiled by the Contractor in anticipation of rendering or in support of their audit opinion relating to the financial statements of the Entity for the fiscal year ending June 30, 2021, inclusive shall not be deemed to be work product and shall remain the sole property of the Contractor.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Services performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the OSA to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, and OSA staff, access to all such records.
5. **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.
 1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 3. Contractor's failure to comply with this section will be considered a material breach of this Contract.

6. **CONFLICT OF INTEREST:** Contractor represents that none of its personnel are officers or employees of the OSA or the State of Utah, unless disclosure has been made to the OSA.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the OSA or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the OSA and the State of Utah from all third party claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional, wrongful act or gross negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the OSA. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause 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.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 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; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the OSA within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the OSA, upon thirty (30) days written termination notice being given to the Contractor. The OSA and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination. Contractor may also terminate this agreement as set forth in the Letters of Engagement.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the OSA or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the OSA be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the OSA's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the OSA for any damages or claims arising under this Contract.
13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the OSA, if the OSA reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the OSA's ability to pay under this 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.

If a written notice is delivered under this section, the OSA will reimburse Contractor for the Services properly ordered until the effective date of said notice. The OSA will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the OSA to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the OSA.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the OSA's funds and used in the exercise of the OSA's essential functions as a State of Utah entity. Upon request, the OSA will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the OSA's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** Contractor shall maintain the following insurance coverage:
 - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers'

compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.

- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the OSA before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

17. **RESERVED.**

18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the OSA and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the OSA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The OSA and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the OSA, except as to latent defects or fraud.

20. **ACCEPTANCE AND REJECTION:** The OSA shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the OSA. Notwithstanding the foregoing, the parties acknowledge and agree that the determination as to 1) whether to issue an audit opinion relating to the financial statements of the Entity for the fiscal year ending June 30, 2021 and 2) the form of any such opinion is at the sole discretion of the Contractor.

If Contractor delivers nonconforming Services, the OSA may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the OSA. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the OSA will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The OSA has the right to adjust or return any invoice reflecting incorrect pricing.

22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail. If payment has not been made after sixty (60) days from the date a correct invoice is received by the OSA, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the OSA within ten (10) business days of receipt of final payment, shall release the OSA and the State of Utah from all claims and all liability to the Contractor. The OSA's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the OSA or the State of Utah may have against Contractor.

23. **RESERVED.**

24. **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 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.

25. **PERFORMANCE EVALUATION:** The OSA may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.

26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors 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. Contractor shall be liable to the OSA and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., 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.

27. **REVIEWS:** The OSA reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the OSA.
29. **REMEDIES:** Any of the following events will constitute cause for the OSA to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The OSA may issue a written notice of default providing a ten (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 OSA may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the OSA or the State of Utah; or (v) demand a full refund of any payment that the OSA has made to Contractor under this Contract for Services that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The OSA may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential in accordance with applicable professional standards; and (iii) not disclose any Confidential Information received by it to any third parties other than in accordance with applicable professional standards. Contractor will promptly notify the OSA of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the OSA or certify, in writing, that the Confidential Information has been destroyed, provided that Contractor may retain its workpapers in accordance with applicable professional standards. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the OSA for written approval all advertising and publicity matters relating to this Contract. It is within the OSA's sole discretion whether to provide approval, which must be done in writing.
- 33.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the OSA and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the OSA or the State of Utah for infringement by Contractor of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. RESERVED
36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The OSA and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing.
37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
38. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
39. **PROCUREMENT ETHICS:** 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, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person 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.
40. **DISPUTE RESOLUTION:** All disputes shall be resolved as outlined in the Letters of Engagement.
41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) the Letters of Engagement; (ii) this Attachment A; (iii) Contract Signature Page(s); (iv) the State of Utah's additional terms and conditions, if any; and (v) any other attachment listed on the Contract Signature Page(s). Any provision attempting to limit the liability of Contractor or limit the rights of the OSA or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.

42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the OSA's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
43. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revised May 13, 2019)
(OSA Revision date: March 11, 2021)

ATTACHMENT B: BACKGROUND AND OVERVIEW

The Utah Communications Authority (UCA), an Independent State Agency, formerly the Utah Communications Agency Network (UCAN), was renamed by the 2014 Utah State Legislature's House Bill 155. This legislation also increased the size and scope of UCA operations considerably. Utah Communications Authority is governed by a board made up of individuals appointed by the president of the Utah Senate and the speaker of the Utah House as well as individuals appointed by the governor and confirmed by the Utah Senate.

UCA's purpose is to provide public safety communication services and facilities on a regional or statewide basis.

UCA is responsible for keeping multiple complex communications systems operational. These systems include a statewide 800 MHz trunked radio network, VHF network, backhaul connectivity, towers, HVAC units emergency generators, UPS systems and many other crucial communication site components. The System allows its users located across the State of Utah to communicate with one another by way of hand-held and mobile radio devices.

UCA uses a proprietary fund method of accounting.