

Humboldt State University

Request for Proposal
08-A-12

for

Fundraising Capacity & Campaign Preparedness
Feasibility Study & Readiness Audit

5/6/2009

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1 BACKGROUND

Humboldt State University (HSU or The University) is the northernmost campus of the California State University system, located in Arcata within rural Humboldt County, California. HSU was founded in 1913 and is located 279 miles north of San Francisco on the North Coast of California, a region noted for its natural beauty.

The 7,550 students at HSU are offered 49 baccalaureate degree majors, comprising 84 minors, 82 options/concentrations, 12 graduate programs, 21 credential programs (including 16 single subject credentials) and several certificates of study. Undergraduate majors are grouped into three main academic divisions or "colleges." The College of Arts, Humanities and Social Sciences houses 17 departments, including Art, English, Music, Native American Studies and Sociology. The College of Professional Studies helps develop professionals who are committed to helping individuals and communities realize their potential. Professional Studies is home to 11 departments, such as the School of Business, Child Development, Economics, Education and Health Care. The College of Natural Resources & Sciences is an ideal fit for students interested in managing and preserving natural resources. Biology, Forestry, Oceanography, Psychology are just a few of the 15 departments within this college.

1.1 Fundraising Capacity & Campaign Preparedness Feasibility Study & Readiness Audit Overview

HSU is a comprehensive, residential campus of the California State University (CSU). We welcome students from California and the world to our campus. We offer them access to affordable, high-quality education that is responsive to the needs of a fast-changing world. We serve them by providing a wide array of programs and activities that promote understanding of social, economic and environmental issues. We help individuals prepare to be responsible members of diverse societies.

These programs and the experience of an HSU education serve as a catalyst for life-long learning and personal development. We strive to create an inclusive environment of free inquiry, in which learning is the highest priority. In this environment, discovery through research, creative endeavors and experience, energizes the educational process.

In recent years, HSU has gradually increased its commitment to fundraising. The president is an advocate of building the institution's fundraising capacity and additional funding has been directed toward this end. In 2006, a vice president was hired who reorganized the Advancement division and launched new fundraising programs.

To date, HSU has focused its fundraising efforts primarily on individual solicitations. HSU has more than 50,000 alumni who live primarily on the West Coast. Through FY 2008, the number of alumni donors, level of alumni participation, size of the endowment, and fundraising receipts have steadily increased. At the end of FY 2008 the University received \$3.575 million in charitable gifts and had an endowment of \$18.4 million.

Through this Request for Proposals, HSU invites experienced and qualified fundraising consulting service providers to submit proposals to perform fundraising consulting services in accordance with the following specifications.

1.2 Purpose of Request for Proposal (RFP)

Humboldt State University is soliciting proposals from fundraising consulting service providers to perform a feasibility study and readiness audit to assess HSU's fundraising capacity and

campaign preparedness. The goal is a resulting contract that will provide HSU's Advancement Division with a strategic direction for future fundraising efforts that will enable the division to plan and secure both endowed and current funds in support of students, faculty and programs at HSU.

HSU seeks consultation services to conduct an assessment of:

- its fundraising programs, their capacity and potential, with an eye towards carrying out a significant fundraising initiative around the time of the university's centennial in 2013;
- the operational capacity and preparedness of the broader university to support an increased level of fundraising activity. This includes an assessment of the institutional environment, including leadership, the university community (faculty and staff) at large, as well as institutional operations, systems and processes; and
- the level of alumni, donor, community and others' interest and capacity to support fundraising efforts and the types of initiatives that would be appealing to potential donors.

Proposals will be accepted from service providers with significant demonstrable and direct work experience in the field of fundraising consulting. Service providers must be prepared to share this expertise and knowledge in both the written proposal and a potential interview with HSU staff prior to the final selection of a consultant. Experience with higher education institutions, campaign planning and feasibility studies preferred.

2 SCOPE OF WORK

To complete this assessment, prospective contractors must submit a proposal that demonstrates their understanding and experience in regard to fundraising feasibility studies, campaign planning and resource development as well as the unique nature of fundraising as it relates to institutions of higher education, public universities and HSU in particular.

At a minimum, this proposal must address the following key components which will deliver a university-level fundraising assessment that guides future fundraising efforts:

- Conduct an internal assessment of HSU's fundraising capacity and fundraising programs;
- Interview key internal constituents to determine how best to position HSU's fundraising activities to complement and support rather than compete for scarce institutional resources;
- Recommend a strategic focus and/or institutional priorities for HSU's fundraising initiatives;
- Identify a potential annual fundraising goal and/or campaign goal;
- Identify the types of fundraising strategies that are likely to be successful and necessary to reach this goal, and the level of resources necessary (both within the Advancement division and in other areas of the university) for HSU to reach this goal;
- Identify the challenges and opportunities facing HSU in order to achieve this goal;
- Conduct an external assessment of how HSU is perceived by current and potential supporters who are representative of alumni and the community;
- Determine the focus and strategies that would best attract funding dollars from different segments of the community including individuals, corporations, foundations;
- Determine the willingness of alumni, donors, the surrounding community and others to financially invest in HSU. Identify sources, availability and prospective amounts of donations from different segments of the community (individuals, civic groups, the business sector, foundations);
- Assess overall campus culture and environment and its level of readiness to support fundraising activities;
- Determine the capacity of the institution's internal financial and administrative processes to support increases in gifts received, management of financial resources, disbursement of funds, including scholarships, and reporting requirements;
- Present and lead the discussion of the assessment results with the university leadership; and
- Submit a final report that includes a detailed summary of the internal assessment including HSU institutional assessment and development operating assessment, external assessment, final actionable recommendations and proposed strategies for future fundraising and resource development efforts.

3 REQUIRED FORMAT

The proposal shall be organized into the sections described below; resumes of available resources that will staff the project **must** be included in the resources section.

3.1 Scope of Work & Approach

A succinct explanation of how your firm will meet the requirements of this RFP. Describe the firm's understanding of the project as outlined in the Scope of Work section of this RFP and a plan for accomplishing these tasks.

3.2 Resources

Provide the name and a resume for each of the proposed team members, including subcontractors, listing their qualifications. Include a management/manpower summary that clearly specifies the number, type and time commitment of individual personnel who will be assigned to this project.

3.3 References

Previous experience in providing fundraising consulting services to educational institutions, non-profits and/or public (governmental) agencies, including examples from similar projects completed for other universities.

Submit verification of the firm's Federal Taxpayer Identification Number (TIN) or Social Security Number. A copy of the IRS letter assigning the federal tax identification number or a letter signed by an official on agency letterhead indicating the federal tax identification number and the firm's legal name is preferred. A Social Security Card is also acceptable

3.4 Project Schedule

Provide a timeline to perform assessment and provide deliverables. The contract is expected to run from July 2009 through October 2009, but this time frame is open to discussion prior to the signing of the contract.

3.5 Price

The firm should submit a cost estimate that includes all activities and deliverables identified in the Scope of Work section. The proposed pricing of the consulting services must encompass all anticipated expenses into the proposed fees, including detailed information on all the one-time costs that HSU will incur and detailed information on all ongoing fees that will be incurred.

If the firm wishes to propose services based upon a monthly management fee, the firm shall summarize all aspects of what the fee will include and what additional expenses will be required as separate charges. If the firm wishes to propose fees based upon itemized expenses, the firm shall summarize all the items that will be included therein and provide estimates of what a "typical" billing would be.

The proposal should fully explain optional, additional, special, and alternative services, which are related to but not necessarily required, that the firm can recommend or make available to HSU along with the financial and non-financial benefits or reasons for HSU to choose those options. Estimate and explain the costs of these options.

If the firm anticipates that travel will be needed for completion of these deliverables, an estimate of costs for proposed travel should be included in the cost proposal and should be estimated at 18-20% given the rural location of the campus.

The amount(s) listed is for the entire contract work including all applicable taxes. Any alteration, erasure, or change must be clearly indicated and initialed by the Respondent. The Respondent agrees that if there are any discrepancies or questions in the figure(s), the University will use the lower figure(s) despite the Respondent's intent. HSU reserves the right to reject any and all bids and to waive any irregularities.

4 NUMBER OF COPIES & DELIVERY

The Respondent shall provide one (1) copy of the proposal in electronic format via email.

HSU is NOT responsible for any delays in electronic delivery. The Respondent should mark their email Return Receipt.

Email proposal to:

A. Gail Dungan
c/o: CS RFP #08-A-12
Humboldt State University
Contracts, Procurement, & Risk Management
A.Gail.Dungan@humboldt.edu

5 INQUIRIES

If you have informal questions about this Request for Proposal, please contact:

Laura Jackson
Associate Vice President for Development and Alumni Relations
Telephone: 707.826.5101
Email: Laura.Jackson@humboldt.edu

NOTE: Emails must be submitted with: “**RFP #08-A-12 Inquiry**” in the email subject line to ensure a response.

If you have **formal** inquiries or requests for significant or material clarification or interpretation, or notification to the University of errors or omissions relating to this Request for Proposal, please contact in writing, by email or facsimile:

A. Gail Dungan
Contracts, Procurement & Risk Management
Humboldt State University
1 Harpst Street
Arcata, CA 95521-8299

Telephone: 707.826.3307
Facsimile: 707.826.3312
Email: A.Gail.Dungan@humboldt.edu

NOTE: Emails must be submitted with: “**RFP #08-A-12 Inquiry**” in the email subject line to ensure a response.

All **formal** inquiries must be submitted by the last date for questions specified in Section 6, SCHEDULE OF EVENTS. Failure to submit inquiries by this deadline may result in the inquiry not being answered.

6 SCHEDULE OF EVENTS

RFP issued	Wednesday, May 6, 2009
Last Day for Submission of Questions	Thursday, May 14, 2009 at 12:00pm PDT
Response to Questions-Addendum Issued	Friday, May 15, 2009
Deadline for Receipt of Proposals	Wednesday, May 20, 2009 4:00pm PDT
Selection Committee Review of RFP Begins	Thursday, May 21, 2009
<u>Estimated:</u>	
Finalists presented to Selection Committee	Monday, June 1 – Friday, June 5, 2009
Decision by Selection Committee	Friday, June 12, 2009
Intent to Award	Friday, June 12, 2009
Contract Award	Friday, June 19, 2009

HSU may modify this RFP, any of its key action dates, or any of its attachments, prior to the proposal submittal date. HSU reserves the right to not award to any vendor.

The University reserves the right to further negotiate the terms and conditions of the contract after evaluating the proposals and discussing them further with the finalists or the tentatively selected Vendor.

7 EVALUATION METHOD

All proposals shall be reviewed to verify that the vendor has met the minimum requirements. Proposals that have not complied with requirements or do not meet minimum content will be eliminated from further consideration.

Proposals will be reviewed and evaluated by a committee. Award will be made in the best interest of HSU. The evaluation process will consider the following criteria. Each criterion will be scored based upon a twenty (20) point scale (20 being the best score) and weighted relative to the multipliers noted to the right of each criterion.

Description

MULTIPLIER

The proposal with the highest rated response for a particular category will be given the maximum highest score in that category.

- A. SCOPE OF WORK & APPROACH (work plan/methodology) X4.0
The committee will evaluate the value and completeness of the proposed plan/methodology and the extent to which it ensures the attainment of HSU's goals.
- B. RESOURCES/REFERENCES (qualifications/experience) X3.0
The committee will evaluate the vendor's qualifications, experience, and ability to provide services in the HSU environment. Significant demonstrable, direct work experience and expertise in the field of fundraising consulting and projects related to fundraising for institutions of higher education is essential.
- C. SCHEDULE X2.0
The committee will evaluate the vendor's ability to provide services that meet HSU's timeline.
- D. PRICE X1.0

The maximum points allotted for price will be given to the lowest cost proposal.

Points for other proposals will be scored with the following formula:

$$\frac{\text{Lowest Bid Price}}{\text{Bid Price}} \times 20 \times 3.0 = \text{Points Awarded}$$

Total Maximum Points Possible

200

8 GENERAL TERMS AND CONDITIONS

Humboldt State University reserves the right to reject all proposals, decline purchase of phases of the project in part or all, or to purchase in any combination at a later date.

Unless otherwise established by the CSU, vendors must comply with all provisions outlined in the California State University (CSU) General Provisions for Service Acquisitions, set forth as Exhibit A.

Contracted pricing shall remain fixed for the extent of the agreement. Humboldt State University, at its discretion, may elect to purchase portions of the awarded vendor's solution.

The contract may be terminated if the vendor does not perform in accordance with the service standards set forth in the scope of work. Humboldt State University will own all deliverables up to the point of termination; all deliverables must be provided in an editable format.

In the event the service provider desires to subcontract any part of the contracted services to another firm after award of the Contract, an amendment must be approved by HSU and executed prior to such arrangements. Only subcontractors specified in the service provider's proposal are to be considered approved upon award of the Contract. The service provider shall require all subcontractors to comply with all provisions herein. Notwithstanding, the service provider shall be held liable for compliance with all duties and functions required by the Contract, whether performed by the Contractor or a subcontractor.

If a Respondent claims preference as a small business, they shall supply with their proposal a completed Small Business Preference and Certification Request, set forth as Exhibit B. This should be included in your response.

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for
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Revision 08/03/06

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1. Commencement of Work

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

2. Invoices

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

3. Appropriation of Funds

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

4. Cancellation

CSU reserves the right to cancel this Contract at any time upon thirty (30) days written notice to the Contractor.

5. Independent Status

The Contractor, and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State of California. While Contractor may (or may not) be required under the terms of this Contract to carry Worker's Compensation Insurance, Contractor is not entitled to unemployment or workers' compensation benefits from the CSU.

6. Conflict of Interest

- (a) Should the Contractor provide services for preparation or development of recommendations for the actions which are required, suggested or otherwise deemed appropriate, and which include the provision, acquisition or delivery of products or service; then the Contractor must provide full disclosure of any financial interest including but not limited to service Agreements, OEM, and/or remarketing Agreement that may foreseeable allow the Contractor to materially benefit from the adoption of such recommendations.
- (b) The CSU requires a Statement of Economic Interests (Form 700) to be filed by any Consultant (or Contractor) who is involved in the making, or participation in the making, of decisions which may foreseeably have a material effect on any CSU financial interest [reference G.C. 82019].

The CSU reserves the right to prohibit participation by the Contractor in bidding to or providing services, goods or supplies or any other related action which is required, suggested or otherwise deemed appropriate in the end product of this Contract.

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7. Governing Law

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

8. Assignments

Without written consent of the CSU, the Contract is not assignable by Contractor either in whole or in part.

9. Time

Time is of the essence of the Contract.

10. Contract Alterations & Integration

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

11. General Indemnity

The Contractor agrees to indemnify, defend and save harmless the CSU, its officers, agents and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the Contractor in the performance of this Contract.

12. Use of Data

The Contractor shall not utilize any information, not a matter of public record, which is received by reason of this Contract, for pecuniary gain not contemplated by the terms of this Contract, regardless of whether the Contractor is or is not under contract at the time such gain is realized. CSU specific information contained in the report, survey, or other product developed by the Contractor pursuant to this Contract is the property of the CSU, and shall not be used in any manner by the Contractor unless authorized by the CSU.

13. Termination for Default

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

14. Personnel

The Contractor shall make every effort consistent with sound business practices to honor the specific requests of the CSU with regard to assignment of its employees; however, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor shall make every reasonable effort to provide suitable substitute personnel.

15. Nondiscrimination

- (a) During the performance of this Contract, Contractor and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- (b) Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government

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Code Sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.

- (c) Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Trustees shall require to ascertain compliance with this clause.
- (d) The provisions of Executive Order 11246, as amended (Equal Employment Opportunity/Affirmative Action), Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212 or VEVRAA), and Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), and the implementing regulations found at 41 CFR 60-1&2, 41 CFR 60-250, and 41 CFR 60-741, respectively, are hereby incorporated by reference.
- (e) Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (f) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract. (Gov. Code Section 12990, 11135 et seq.; Title 2, California Code of Regulations, Section 8107).

16. Drug-Free Workplace Certification

By accepting a contract or purchase order, the Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8355 et. seq.) and will provide a drug-free workplace by doing all of that which Section 8355 et seq. require.

17. Severability

It is expressly agreed and understood by the parties hereto that if any provision of this Contract is held to be unconscionable or invalid under any applicable statute or rule of law, it is deemed to that extent to be omitted. However, the balance of the Contract shall remain in full force and effect.

18. Dispute

Any dispute arising under the terms of this Contract which is not resolved within a reasonable period of time by authorized representatives of the Contractor and the CSU shall be brought to the attention of the Chief Executive Officer (or designated representative) of the Contractor and the Chief Business Officer (or designee) of The CSU for joint resolution. At the request of either party, The CSU shall provide a forum for discussion of the disputed item(s), at which time the Vice Chancellor, Business and Finance (or designated representative) of The CSU shall be available to assist in the resolution by providing advice to both parties regarding The CSU contracting policies and procedures. If resolution of the dispute through these means is pursued without success, either party may seek resolution employing whatever remedies exist in law or equity beyond this Contract. Despite an unresolved dispute, the Contractor shall continue without delay to perform its responsibilities under this Contract. The Contractor shall keep accurate records of its services in order to adequately document the extent of its services under this Contract.

19. Privacy of Personal Information

Contractor expressly acknowledges the privacy rights of individuals to their personal information that are expressed in the State's Information Practices Act (California Civil Code Section 1798 et seq.) and in California Constitution Article 1, Section 1. Contractor shall maintain the privacy of personal information. Contractor shall not release personal information contained in CSU records without full compliance with applicable state and federal privacy laws. Contractor further, acknowledges Federal privacy laws such as Gramm-Leach-Bliley Act (Title 15, United States Code, Sections 6801(b) and 6805(b)(2)) applicable to financial transactions and Family Educational Rights and Privacy Act (Title 20, United States Code, Section 1232g) applicable to student records and information from student records. Contractor shall maintain the privacy of protected personal information and shall be financially responsible, if and to the extent that any security breach relating to protected personal information results from acts or omissions of Contractor, or its personnel, for any notifications to affected persons (after prompt consultation with CSU), and to the extent requested by CSU, administratively responsible for such notification.

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20. Waiver of Rights

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

21. Endorsement

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

22. Patent, Copyright, and Trade Secret Indemnity

A contractor may be required to furnish a bond to the CSU against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement. In addition:

- (a) The Contractor, at its own expense, shall defend any action brought against the CSU to the extent that such action is based upon a claim that the product supplied by the Contractor or the operation of such product infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the CSU in any such action. Such defense and payment shall be conditioned on the following:
 - (i) That the Contractor shall be notified within a reasonable time in writing by the CSU of any notice of such claim; and,
 - (ii) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the CSU has the option to participate in such action at its own expense.
- (b) Should the product, or the operation thereof, become, or in the Contractor's opinion is likely to become, the subject of a claim of infringement of a United States or foreign patent or copyright or a trade secret, the CSU shall permit the Contractor at its option and expense either to procure for the CSU the right to continue using the product, or to replace or modify the same so that they become non-infringing provided such replacement or modified product satisfies the performance requirements specified in the Contract. If none of these options can reasonably be taken, or if the use of such product by the CSU shall be prevented by injunction, the Contractor agrees to take back such product and make every reasonable effort to assist the CSU in procuring a substitute product. If, in the sole opinion of the CSU, the return of such infringing product makes the retention of other products acquired from the Contractor under this contract impractical, the CSU shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such product and refund any sums the CSU has paid Contractor less any reasonable amount for use or damage.

23. Compliance with NLRB Orders

Contractor declares under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

24. Examination and Audit

For contracts in excess of \$10,000, the Contractor shall be subject to the examination and audit of (a) the Office of the University Auditor, and (b) the State Auditor, for a period of three (3) years after final payment under the contract in accordance with Government Code Section 8546.7 and with Education Code Section 89045(c & d), respectively. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the Contract.

25. DVBE and Small Business Participation

The State of California supports statewide participation goals of 3% for disabled business enterprises, (DVBE Program) and requires agencies to provide a 5% preference when awarding contracts to small businesses. Only small businesses

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certified by the Office of Small Business and DVBE Services (OSDS) are eligible to receive the preference. The CSU encourages all contractors to use the services of DVBE and OSDS-certified small business enterprises whenever possible, and to report their use to the CSU.

26. Citizenship and Public Benefits

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

27. Americans With Disabilities Act (ADA)

Contractor warrants that it complies with California and federal disabilities laws and regulations.

28. Child Support Compliance Act

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

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

29. Document Referencing

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

30. Forced, Convict, Indentured and Child Labor

By accepting a contract or purchase order, the Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to this Contract have been laundered or produced in whole or in part by sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, or abusive forms of child labor or exploitation of children in sweatshop labor. Contractor shall cooperate fully in providing reasonable access to the Contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the CSU, the Department of Industrial Relations, or the Department of Justice determine the Contractor's compliance with the requirements above. (Public Contract Code Section 6108)

31. Covenant Against Gratuities

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

32. Rights and Remedies of CSU for Default

- (a) In the event any Deliverables furnished or services provided by the Contractor in the performance of this Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the CSU may reject the same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same forthwith or to correct the performance of services, without expense to the CSU, and immediately to replace all such rejected items

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with others conforming to such specifications or samples; provided that should the Contractor fail, neglect, or refuse to do so, the CSU shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any moneys due or that may thereafter become due to the Contractor the difference between the price named in the Contract and the actual cost thereof to the CSU.

- (b) In the event the Contractor shall fail to make prompt delivery as specified of any item, the same conditions as to the right of the CSU to purchase in the open market and to reimbursement set forth above shall apply, except for force majeure. Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts (known as "force majeure") shall include but shall not be limited to fire, strike, freight embargo or acts of God and of the Government. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.
- (c) In the event of the termination of the Contract, either in whole or in part, by reason of the default or breach thereof by the Contractor, any loss or damage sustained by the CSU in procuring any items which the Contractor therein agreed to supply shall be borne and paid for by the Contractor.
- (d) The rights and remedies of the CSU provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

33. Contractor's Power and Authority

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

34. Recycled Content Certification

Contractor agrees to certify in writing, under penalty of perjury, the minimum, if not the exact, percentage of recycled content material, as defined in Sections 12161 and 12200 of the Public Contract Code, in materials, goods, or supplies used in the performance of this Contract.

35. Entire Contract

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

36. Safety and Accident Prevention

In performing work under this Contract on CSU premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the CSU may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with default provisions hereof.

37. Follow-On Contracts

- a) If the Contractor or its affiliates provides Consulting and Direction (as defined below), the Contractor and its affiliates:
 - (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Consulting and Direction, whichever comes later.
- b) "Consulting and Direction" means services for which the Contractor received compensation from the CSU and includes:

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

38. Expatriate Corporations

By accepting a contract or purchase order, the Contractor declares under penalty of perjury under the laws of the State of California that the Contractor is eligible to contract with the CSU pursuant to The California Taxpayer and Shareholder Protection Act of 2003, Public Contract Code Section 10286 et. Seq.

39. Insurance Requirements

Contractor shall furnish to the CSU prior to the commencement of work an underwriter's endorsement with a certificate of insurance stating that there is General Liability insurance presently in effect for the contractor with a combined single limit of not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate; and that vehicle insurance (where applicable) is in effect with a minimum coverage of \$1,000,000 per occurrence.

- (a) The certificate of insurance shall provide:
 - (i) That the insurer will not cancel the insured's coverage without thirty (30) days prior notice to the CSU;
 - (ii) That the State of California, the Trustees of the California State University, the CSU, the campus, and the employees, volunteers, officers, and agents of each of them, are included as additional insureds, but only insofar as the operations under this contract are concerned;
 - (iii) That the State, the Trustees, and the CSU, and the employees, officers, and agents of each of them will not be responsible for any premiums or assessments on the policy;
 - (iv) That the insurer has an AM Best rating of A: VII or equivalent.
- (b) Contractor agrees that the bodily injury liability insurance herein provided shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of the term of the contract, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the CSU, and the contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event contractor fails to keep in effect at all times insurance coverage as herein provided, the CSU may in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.
- (c) Workers' Compensation insurance coverage as required by the State of California.

40. Rights in Work Product

- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records

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relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.

- b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Clause will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials. The CSU will have Government Purpose Rights to the Work Product as Deliverable or delivered to the CSU hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the CSU for any CSU purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any CSU purpose. Such recipients of the Work Product may include, without limitation, CSU Contractors, California State government, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.

This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

41. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to CSU's operation which are designated confidential by the CSU and not otherwise subject to disclosure under the California Public Records Act, and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor using the same level of care in preventing unauthorized disclosure or use of the confidential information that it takes to protect its own information of a similar nature, but in no event less than reasonable care. The Contractor shall not be required under the provisions of this clause to keep confidential any data or information that is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

THE CALIFORNIA STATE UNIVERSITY

SMALL BUSINESS PREFERENCE AND CERTIFICATION REQUEST

(Bidders requesting a 5% Small Business Preference must sign below and enclose this form in the Bid Package)

Project No. _____

Project Name _____

The undersigned hereby requests preference as a "Small Business" and further certifies under penalty of perjury, that the firm still meets the requirements of the California Code of Regulations, Title 2, Section 1896 *et seq.*

NOTICE TO ALL BIDDERS: Section 14835 *et seq.* of the California Government Code, requires that a five percent preference be given to bidders who qualify as a small business. The rules and regulations of this law, including the definition of a small business for the delivery of service, are contained in Title 2, California Code of Regulations, Section 1896, *et seq.* A copy of the regulations is available upon request.

If your firm is a Small Business and wishes to claim the small business preference, which may not exceed \$50,000 for any bid, your firm must have its principal place of business located in California, have a complete application (including proof of annual receipts) on file with the Small Business & DVBE Services Branch, in the Procurement Division of the State of California Department of General Services, by 5:00 p.m. on the date bids are opened, and be verified by such office.

Or, if your firm is a Non-Small Business and wishes to claim the small business preference, your firm must notify the Trustees by signing below, that your firm commits to subcontract at least 25% of its net bid price with one or more small businesses, submit a timely responsive bid, list the small business subcontractors and include name, address, phone number, portion of the work to be performed, and the dollar amount and percentage per subcontractor, and be determined a responsible bidder.

Questions regarding the preference approval process should be directed to Small Business & DVBE Services, telephone (800) 559-5529 or (916) 375-4940, address: 707 Third Street, First Floor-Room 400, West Sacramento, CA 95605, or if by mail: P.O. Box 989052, West Sacramento, CA 95798-9052. You can also reach them via email (osdchelp@dgs.ca.gov) or on the Internet: www.pd.dgs.ca.gov/smbus.

IMPORTANT NOTICE (Read before signing)

The "Small Business Preference and Certification Request" must be signed in the same name style in which the bidder is licensed by the Contractors State License Board. Bidders bidding jointly or as a combination of several business organizations are specially cautioned that such bidders must be jointly licensed and approved in the same form and style in which the bid is executed.

Legal Name Style of Bidder(s)

Signature of Bidder

Date

In the event the bidder has received assistance in obtaining bonding for this project, it shall set forth the name and nature of the firm providing such assistance. Should the firm be listed as a subcontractor, bidder shall set forth the percentage of the contract to be performed by the subcontractor.

Name of Firm

Is Firm Above a Listed Subcontractor? _____ Yes _____ No _____ Percentage _____

Special attention is directed to section 1896.16 for penalties for furnishing incorrect supporting information in obtaining preference.

