



**COLORADO OFFICE  
OF THE STATE  
AUDITOR**

**A REQUEST FOR PROPOSALS**

**FOR A PERFORMANCE AUDIT OF THE COLORADO  
NEW ENERGY IMPROVEMENT DISTRICT AND ITS  
NEW ENERGY IMPROVEMENT PROGRAM**

*August 27, 2018*

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## SECTION I

### ADMINISTRATIVE INFORMATION

#### A. ISSUING OFFICE

This request for proposal (RFP) is issued by the Office of the Colorado State Auditor (OSA). The terms State Auditor, OSA, State, and State of Colorado are used interchangeably. As an agency within the Legislative Branch, the OSA and this solicitation are exempt from the State Procurement Code and State Procurement Rules. *All communications regarding this RFP should take place directly with the OSA's assigned contract monitor listed in this RFP.*

#### B. BACKGROUND INFORMATION

Section 2-3-120, C.R.S., requires the State Auditor to conduct a performance audit of the Colorado New Energy Improvement District and its new energy improvement program every 5 years.

##### **Colorado New Energy Improvement District**

The Colorado New Energy Improvement District (District) is a statewide special statutory district created to establish, develop, finance, implement, and administer a new energy improvement program that assists property owners who voluntarily join the District and use its new energy improvement program to finance energy efficiency or renewable energy improvements to their property. In accordance with state statute (see Section 32-20-101, et seq., C.R.S.), the District:

- Is not an agency of the State or of any local government.
- Is not subject to administrative direction by any department, commission, board, or agency of the State or of any local government.
- Is not a "district" as defined by Article X, Section 20(2)(b) of the Colorado Constitution (commonly referred to as the "Taxpayer's Bill of Rights" or "TABOR").
- Is not authorized to levy general taxes.

The District is governed by a seven-member board of directors (Board) comprising the Director of the Colorado Energy Office or his or her designee, and six remaining members appointed by the Governor for 4-year terms. Of the six appointed members:

- One member must have executive-level experience in commercial or residential real estate development.

- Two members must have at least 10 years of executive-level experience with one or more financial institutions, at least one of whom has had such experience with one or more financial institutions having total assets of less than \$1 billion.
- One member must have executive-level experience in the utility industry.
- One member must represent the energy efficiency industry.
- One member must represent the renewable energy industry.

Board members receive no compensation for their services, but are entitled to reimbursement of necessary expenses (e.g., travel and lodging) incurred in the discharge of their official duties.

The District's boundaries include the eligible real property of those owners who have voluntarily joined the District through participation in the new energy improvement program established by the District *and* whose property is located within those counties whose county commission has adopted a resolution authorizing the District to conduct the new energy improvement program within the county. To date, only 20 of Colorado's 64 counties (Adams, Arapahoe, Boulder, Broomfield, Delta, Denver, Eagle, Fremont, Garfield, Gunnison, Jefferson, Lake, Larimer, Montezuma, Montrose, Pitkin, Pueblo, Routt, San Miguel, and Weld) have authorized such participation.

Currently, the District has no employees. However, in early 2018, the District Board contracted with a law firm to help manage District operations.

### **Commercial Property Assessed Clean Energy Program**

State statute charges the District with establishing and overseeing a statewide new energy improvement program for energy efficiency, renewable energy, and water conservation upgrades on eligible real property. Specifically, the Commercial Property Assessed Clean Energy Program (C-PACE Program or Program) allows a property owner to finance the large, up-front cost of energy or other eligible improvements on a property and then pay the costs back over time (typically 10 to 20 years). Repayment is made through a voluntary special assessment and corresponding lien placed on the property by the District. The Program relies on the local property tax payment process to collect the C-PACE assessment; however, it is not a property tax.

House Bill 10-1328 (the New Energy Jobs Creation Act of 2010) authorized the creation of the District and a statewide *residential* PACE program. However, in July 2010, just after the passage of House Bill 10-1328, the Federal Housing Finance Agency (FHFA) issued a statement advising Fannie May and Freddie Mac to avoid buying mortgages that have PACE assessments because most PACE loans were the senior liens on the property, ahead of the mortgage obligation itself. This statement from the FHFA effectively stalled the development of residential PACE programs, including Colorado's.

Senate Bill 13-212 (the New Energy Jobs Act of 2013) expanded the scope of the District and refocused its PACE program on improvements to *commercial* properties (C-PACE),

which was not included in the FHFA's 2010 statement. Senate Bill 13-212 made a number of other key changes, including expanding the allowable energy improvements, developing a process to fund new energy improvements through private third-party financing (as opposed to special assessment bonds issued by the District), and ensuring the consent of mortgage holders to subordinate the priority of their mortgages to the District's special assessment.

### Eligible Properties & Improvements

Within the 20 counties that have authorized participation in the Program, owners of commercial or multifamily (five or more units) buildings can use the Program to finance qualifying energy efficiency, renewable energy generation, water conservation, and other energy improvements on existing and newly constructed properties. Buildings owned by state and local government agencies are technically eligible to participate in the Program; however, project applications from these entities must be assessed on a case-by-case basis for possible TABOR implications.

“Energy efficiency improvements” are installations or modifications to eligible real property that are designed to reduce the energy and/or water consumption of the property, such as:

- Insulation in walls, roofs, floors, and foundations, and in heating and cooling distribution systems
- Storm windows and doors, multi-glazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption
- Automatic energy control systems
- Heating, ventilating, or air conditioning, and distribution system modifications or replacements in a building
- Caulking and weather-stripping and other air sealing measures
- Replacement or modification of lighting fixtures and controls to increase the energy efficiency of the system
- Energy recovery systems
- Daylighting systems (e.g., skylights, controls, light shelves)
- Combined heat and power (CHP) and waste-to-power projects
- Electric vehicle charging equipment added to a building or its associated parking area
- Other modification, installation, or remodeling approved as a utility cost-savings measure by the District, including water conservation fixtures, both indoor and outdoor, and for both hot and cold water

“Renewable energy improvements” are installed on the customer side of the electric meter that produce energy from renewable resources, such as photovoltaic, solar thermal, small

wind, low-impact hydroelectric, biomass, fuel cell, or geothermal systems (including geothermal heat pumps).

Eligible improvements must generate “utility cost savings;” however, there is no statutory requirement that the projects generate positive cash flows based on energy savings. The District encourages property owners to submit projects that have a Savings-to-Investment Ratio (SIR) greater than 1.0 for the following reasons:

- Capital providers look favorably on projects that show positive cash flow over their lifetimes.
- Mortgage holders are more likely to consent to the imposition of the senior C-PACE assessment lien for projects that show positive cash flow.
- In general, the higher the SIR, the greater the demonstrated environmental benefits of the project, helping to promote the statutory goals for the Program.

### C-PACE Project Financing

C-PACE financing is available for terms of up to 20 years. There is no maximum financing amount available through the Program for improvements to existing properties. The financing amount available through the Program for improvements to newly constructed properties cannot exceed 20 percent of the total eligible construction cost.

The District has the statutory authority to issue up to \$800 million in special assessment bonds for financing eligible new energy improvement projects. However, the District has not issued any special assessment bonds to date because Senate Bill 13-212 directed the District to develop a process for funding projects through private third-party financing. As of July 19, 2018, the District reports that 22 approved C-PACE projects totaling \$19.7 million have been successfully financed through this private third-party financing model.

The property owner, not the District or the Program, selects the capital provider to provide financing for their approved project. Because C-PACE assessments are more senior to private mortgages and loans, many capital providers view financing for C-PACE projects as less risky than commercial loans, thereby generating attractive interest rates and longer terms. Property owners are free to bring their own capital provider to the project. However, the Program also maintains a list of qualified capital providers and, at the property owner’s request, will facilitate obtaining basic financing terms and conditions from these qualified capital providers for the approved project. The Program does not consider qualified capital providers to be “preferred” providers; all qualified and approved capital providers are eligible to provide C-PACE financing.

Each county that participates in the Program has agreed to collect the C-PACE assessments from participating property owners via the property tax collection system and to remit those funds to the District (or its designated fiduciary) for distribution to the project’s capital providers. Section 30-1-102(1)(c), C.R.S., authorizes county treasurers to collect a service

fee equal to 1 percent of the amount of each special assessment payment to support these activities.

Because the C-PACE assessment lien is a debt of property, meaning the debt is tied to the property as opposed to the property owner(s), the repayment obligation generally transfers with property ownership if the property is sold prior to the end of the agreed-upon special assessment period. Nonpayment of the C-PACE assessment generally results in the same consequences as a failure to pay property taxes.

### District & Program Funding

The Program is designed to be self-sustaining whereby revenues from project closing fees paid by property owners (i.e., District members) are sufficient to cover the costs associated with administering the Program, as well as the District's operations. Currently, property owners participating in the Program pay an administration fee equal to 2.5 percent of the project's financed amount, not to exceed \$50,000 per project. The administration fee is typically included in the total financed amount for the project. The District retains 0.25 percent of the administration fee, not to exceed \$5,000 per project, and the remaining 2.25 percent, not to exceed \$45,000 per project, is paid to the Program Administrator.

Until projects could be successfully financed and revenue from program administration fees was available, the Colorado Energy Office (CEO) awarded the District \$1,235,000 in public grant funding—a \$735,000 grant in February 2016 and a \$500,000 grant in March 2017—to fund Program start-up and operating costs.

The District's adopted 2018 budget anticipates total revenues of about \$37,500 from the Program administration fee and total expenditures of about \$81,500 for Program management, office administration (e.g., accounting), legal fees, events, membership dues and subscriptions, and Board travel and expense reimbursements. The District continues to rely on the initial grant funding from CEO to cover its expenses. After setting aside an emergency reserve of 10 percent of annual expenditures, the District expects its 2018 year-end unrestricted reserves to be about \$368,400.

### Program Administration

In October 2015, the District contracted with Sustainable Real Estate Solutions, Inc., to serve as the Program Administrator with responsibility for the day-to-day coordination and delivery of the C-PACE Program in accordance with the Program Guide adopted by the Board.

The initial 2-year contract term ran from October 2015 through October 2017. Under this initial contract, the District paid the Program Administrator a fixed fee not to exceed \$622,660, plus a variable "success fee" equal to 2.5 percent of the financed project amount, up to a maximum of \$75,000 per project. The contract also allowed for reimbursement of the Program Administrator's costs for mileage, printing, postage, lodging, and meals. A

new contract was executed in March 2018 and currently runs through December 2018 with an option to extend the contract for up to four additional 1-year terms. Under the current contract, the District pays the Program Administrator a variable “success fee” equal to 2.25 percent of the financed project amount, up to a maximum of \$45,000 per project; there is no fixed fee component.

The scope of the Program Administrator’s responsibilities fall into three primary areas, as outlined in the contract:

- **Program Management**
  - Create, maintain, and update the Program website, including downloadable versions of all Program materials; lists of eligible improvements, qualified capital providers, registered contractors, participating counties; and case studies of successful projects.
  - Manage project application intake and processing, including ensuring eligibility requirements are met, conducting onsite inspections to verify project installation, and preparing post-construction commissioning oversight reports.
  - Manage contractor prequalification application intake and processing, including obtaining proof that the contractor has all applicable Colorado state professional licensing.
  - Maintain regular communication with the District, including participating in Board meetings and reporting on Program metrics.
  
- **Marketing Management**
  - Create, maintain, and update all Program materials, including fact sheets, outreach materials, case studies, frequently asked questions.
  - Manage education and outreach campaigns for property owners, capital providers, contractors, utilities, and counties.
  - Provide training sessions for property owners, capital providers, contractors, and counties.
  - Maintain regular communication with the District, including participating in Board meetings and reporting on Program metrics.
  
- **Financial Management**
  - Manage capital provider application intake and processing, including ensuring that eligibility requirements are met.
  - Supporting capital providers during the financial transaction closing process, including coordinating the execution and delivery of all capital provider-focused documentation associated with C-PACE transactions and providing written and verbal guidance as needed for potential contingencies.
  - Coordinating county activities, including District-county contractual agreements for Program participation and assisting county assessors and treasurers with setting up special assessments.



- Transactional duties, including assisting the District with certification and transmission of certified assessment rolls to county treasurers, end of lien processing upon payoff, and coordinating the exercise of remedies on default.
- Maintain regular communication with the District, including participating in Board meetings and reporting on Program metrics.

**C. SERVICES REQUIRED – DELIVERABLES AND TIMELINES**

The OSA is soliciting proposals from qualified organizations to conduct a performance audit of the District and Program, as required by Section 2-3-120, C.R.S. Specifically, the engaged organization will be required to plan and perform the audit work to gain sufficient, appropriate evidence necessary to conclude on the audit’s objectives and to develop related findings and recommendations. The OSA will provide the engaged organization with guidance and oversight; however, the engaged organization will be responsible for planning and conducting the work, developing complete written findings, writing the report, and presenting the report to the Legislative Audit Committee. Specific details regarding the audit’s objectives are described later in this section. The OSA expects the contractor to satisfy the project deliverables and timelines outlined in this RFP to meet a June 2019 Legislative Audit Committee hearing date, at which point the audit report will be publicly released.

The OSA prefers that the engaged organization conduct this performance audit in accordance with *Government Auditing Standards, 2011 Revision* (generally accepted government auditing standards) issued by the U.S. Comptroller General. However, the OSA will consider proposals for conducting this project as a performance evaluation outside of generally accepted government auditing standards.

**Work for this project is expected to commence the week of October 22, 2018. *Note:*** *This is an estimated start date. Work could begin sooner or later depending on how long it takes to route and execute the contract after selection of the successful proposal. No work can begin until the contract is fully executed by the State and the successful bidder.*

**Planning and Fieldwork**

The planning and fieldwork phases of this project are expected to take place the week of October 22, 2018 through the week of December 31, 2018. The engaged organization will be required to complete the following tasks in the planning and fieldwork stages:

<b>Planning and Fieldwork</b>		
<b>Tasks</b>	<b>Details</b>	<b>Completed No Later Than</b>
Hold Planning Meeting with the OSA	Hold a planning meeting with the OSA contract monitor prior to the entrance conference. This meeting could be held in person or by conference call.	Week of October 22, 2018

<b>Planning and Fieldwork</b>		
<b>Tasks</b>	<b>Details</b>	<b>Completed No Later Than</b>
Hold Entrance Conference with the District	Hold an in-person entrance conference with the appropriate District personnel to discuss the audit, timeline, and logistics. The OSA contract monitor, Deputy State Auditor, and State Auditor participate in this meeting. The engaged organization is responsible for scheduling this meeting with the assistance of the OSA contract monitor.	Week of October 29 or November 5, 2018
Begin Fieldwork	Obtain and review documentation, interview District personnel and others as appropriate, and analyze data. Have ongoing communication with the District throughout fieldwork to request documentation and data; ensure a clear understanding of District/Program operations, requirements, and criteria; clear the results of file reviews and data analysis; and update on logistics.	Week of October 22, 2018 through completion of the contract
Provide Updates to the OSA	Provide routine updates regarding the status of the audit work, noted problems, preliminary findings, etc., to the OSA contract monitor throughout the duration of the engagement. The engaged organization should notify the OSA contract monitor immediately of any problems or delays in gathering information, completing the work, or communicating with the District. Routine updates may be provided verbally and/or through written progress reports on a schedule determined jointly by the OSA contract monitor and the engaged organization.	Week of October 22, 2018 through completion of the contract
Complete Fieldwork	Complete the majority of the fieldwork necessary to conclude on the audit objectives and have preliminary findings developed for submission to the OSA contract monitor. Adjustments and refinements to the fieldwork performed will continue past this date as the draft written findings are discussed, reviewed, revised, and approved prior to their submission to the District.	Week of December 31, 2018

## **Findings and Report**

*The OSA has a very rigorous findings and report review process, which includes review and revisions at multiple levels of the organization.* Prospective bidders should take this into consideration when preparing a proposed calendar and budget. The findings and final report should adhere to the OSA’s standards as described in “Exhibit G – Developing and Presenting Findings” and “Exhibit H – Reporting Requirements and Format for Separately Issued Reports” of the OSA’s standard contract, which is included in Section IV - Supplemental Information of this RFP. In addition, we have included a link in Section IV of this RFP as an example of a recent report issued by the OSA. Prospective bidders should review that report to gain an understanding of the OSA’s expectations for written reports.

The findings and reporting phases of the project are expected to take place the week of December 31, 2018 through the week of May 13, 2019. The engaged organization will be required to complete the following tasks in the findings and reporting phases:

<b>Findings and Reporting</b>		
<b>Tasks</b>	<b>Details</b>	<b>Completed No Later Than</b>
Submit Written Draft Findings to the OSA Contract Monitor	Prepare and submit detailed written findings reflecting completion of all the work required in the scope of work to the OSA contract monitor. The findings should adhere to the format outlined in “Exhibit G – Developing and Presenting Findings” of the OSA’s standard contract. The engaged organization should allow approximately 3 weeks for review by the OSA contract monitor.	Week of December 31, 2018
Coordinate with the OSA Contract Monitor to Submit Written Findings to the Deputy State Auditor	The engaged organization should allow a minimum of 3 weeks for the Deputy State Auditor’s review and for the engaged organization to make revisions. If needed, the OSA contract monitor will schedule a meeting or conference call for the engaged organization to discuss the findings with the Deputy State Auditor.	Week of January 21, 2019
Coordinate with the OSA Contract Monitor to Submit Written Findings to the State Auditor	The engaged organization should allow a minimum of 2 weeks for the State Auditor’s review and for the engaged firm to make revisions. If needed, the OSA contract monitor will schedule a meeting or conference call for the engaged organization to discuss the findings with the State Auditor.	Week of February 11, 2019
Coordinate with the OSA Contract Monitor to Submit Written Findings to the District	Once the written findings are approved by the State Auditor, coordinate with the OSA contract monitor to submit the written findings to the District for review prior to the findings clearing meeting. The written findings should be provided to the District at least 1 week prior to the findings clearing meeting.	Week of February 25, 2019
Hold Findings Clearing Meeting with the District	Hold an in-person findings clearing meeting with the District to obtain and discuss the District’s feedback on the written findings. The OSA contract monitor and Deputy State Auditor participate in this meeting. The engaged organization is responsible for scheduling this meeting with the assistance of the OSA contract monitor.	Week of March 11, 2019
Submit Draft Report to the OSA	Prepare a draft report using the written findings and the requirements outlined in “Exhibit H – Reporting Requirements and Format for Separately Issued Reports” of the OSA’s standard contract. Submit the draft report to the OSA contract monitor for review. Allow approximately 3 weeks for the OSA contract monitor, Deputy State Auditor, and State Auditor to review the report, and for the engaged organization to make revisions in response to those reviews.	Week of March 25, 2019
Submit Draft Report to the District	Once the draft report is approved by the State Auditor, coordinate with the OSA contract monitor to submit the draft report to the District for review prior to the exit conference and begin preparing its written responses to any recommendations. The draft report should be provided to the District at least 1 week prior to the exit conference.	Week of April 15, 2019

<b>Findings and Reporting</b>		
<b>Tasks</b>	<b>Details</b>	<b>Completed No Later Than</b>
Hold Exit Conference with the District	Hold an in-person exit conference with the District to obtain and discuss the District's feedback on the draft report. The engaged organization is responsible for scheduling this meeting with the assistance of the OSA contract monitor. In consultation with the OSA, the engaged organization is responsible for making revisions to the report, as appropriate, to address comments or concerns raised by the District. All report changes must be reviewed and approved by the OSA before submitting the revised draft to the District.	Week of April 29, 2019
Obtain Written Responses from the District	Coordinate with the OSA contract monitor to obtain and review the District's written responses to audit recommendations and, once obtained, work with the OSA to revise the report narrative, suggest revisions to the District's responses, and prepare Auditor's Addenda, as appropriate.	District responses are due no later than May 3, 2019
Final Report Review and Approval for Print	Review the final report to ensure the accuracy of all information contained in the report. Submit the final print-ready report to the OSA contract monitor for final review and approval by the OSA contract monitor, Deputy State Auditor, and State Auditor.	Submit final print-ready report to the OSA no later than May 8, 2019.  OSA to provide approval to print no later than May 14, 2019.
Provide Final Electronic Report File and Printed Hard Copies to the OSA	Once the State Auditor has approved the final report for printing, provide the OSA contract monitor with the following: <ul style="list-style-type: none"> <li>o An electronic copy of the final report file in unprotected PDF format.</li> <li>o Up to 100 hard copies of the bound printed report. The exact number of copies will be determined by the OSA at the time of report finalization. Acceptable binding formats are limited to spiral, comb, and glued bindings; 3-ring bindings are not acceptable.</li> </ul> The OSA is responsible for distributing the final report to the Legislative Audit Committee and the District in advance of the hearing.	No later than May 17, 2019
Conduct Dry Run of LAC Presentation with the OSA	Coordinate with the OSA contract monitor regarding the format and content of the Legislative Audit Committee presentation. This includes conducting a dry run of the engaged organization's presentation with the OSA contract monitor and Deputy State Auditor and incorporating suggested revisions. The dry run can occur in person or via conference call. The engaged firm may also be asked to provide the OSA with a written script of the presentation.	Week of May 27, 2019
Present Report to the Legislative Audit Committee	Provide in-person oral testimony to the Legislative Audit Committee. The engaged organization will be required to testify for about 1½ to 2 hours, summarizing the report's findings, conclusions, and recommendations and responding to questions from Committee members.	June 3 or 4, 2019 (planned, but not yet officially scheduled)

## Audit Objectives

The engaged organization should plan and perform audit work to obtain sufficient, appropriate evidence to address the following objectives and support any related findings and recommendations:

- **Objective 1.** Gather and report background information and data about the District and the C-PACE Program, including information summarizing the District's and the Program's purpose, financial and operational activities, and outcomes to date.
  
- **Objective 2.** Determine whether the District has sufficient controls in place to ensure effective oversight, monitoring, and reporting related to its activities and the administration of the C-PACE Program. Specifically, the audit work should include an assessment of the following:
  - The District's process used to select the current Program Administrator.
  - The District's monitoring of the Program Administrator's activities to ensure completion of deliverables in accordance with contract terms.
  - The methodologies used by the District and the Program Administrator to estimate, calculate, and substantiate reported Program outcomes in the following key areas on approved projects: jobs created, projected lifetime cost savings, and projected energy savings. Specific projects may be tested on a sample basis.
  - The District's compliance with the Local Government Budget Law (Title 29, Article 1, Part 1, C.R.S.), the Local Government Audit Law (Title 29, Article 1, Part 6, C.R.S.), and the Open Meetings Law (Title 24, Article 6, Part 4, C.R.S.).
  - The District's payments to the Program Administrator and reimbursements for Board members' expenses for compliance with applicable policies and procedures, contract terms, and other requirements. Expenditures may be tested on a sample basis.
  - The District's reporting to the House and Senate State, Veterans, and Military Affairs Committees (or successor committees), as required by Section 32-20-105(3)(g), C.R.S.
  - The District's reporting to the Colorado Energy Office, as required by grant agreements.
  
- **Objective 3.** Assess the District's efforts to ensure the future financial sustainability of the District and C-PACE Program without the need to rely on future public funding from the Colorado Energy Office. The audit work should include a review of the District's operating budgets; revenues and expenditures; the C-PACE Program administration fee structure; District financial analysis, forecasts, or projections; and fee financing/structures used for C-PACE programs operating in other states.

In addition to audit work that is specific to the audit's objectives, the engaged organization should expect to conduct the following general audit work to gain an understanding of the District and the Program and help address the audit's objectives:

- Review District and Program statutes
- Review Board governance documents (e.g., bylaws, resolutions)
- Review Board meeting agendas, minutes, and notices
- Review District policies and procedures
- Review contracts between the District and the Program Administrator
- Review contracts between the District and other vendors providing services to the District
- Review grant agreements between the District and the Colorado Energy Office
- Review the C-PACE Program Guide and other Program materials
- Conduct interviews with District Board members, the Program Administrator, and other key stakeholders
- Identify and confirm the specific criteria (i.e., statute, policy, procedure, contract requirement, best practices) being applied to the audit work.
- Research C-PACE programs in operation in other states for comparison with the District's C-PACE Program, as needed.

The OSA has submitted a preliminary document request to the District. All documentation received in response to this preliminary document request will be provided upon contract execution to the organization selected for this engagement.

Bidders' proposals should clearly outline the approaches, work steps, analytics, and methodologies the engaged organization will use to achieve the audit's objectives. Although some work approaches have been outlined in this RFP, bidders are encouraged to rely on their expertise and experience to develop approaches, work steps, analytics, and methodologies that will accomplish the audit's objectives effectively and efficiently. The OSA recognizes that the work plan will evolve and change as the work progresses and evidence is gathered.

**D. INQUIRIES**

Prospective bidders may make written inquiries concerning this RFP to obtain clarification of requirements. Please address all inquiries to Greg Fugate, Contract Monitor, [greg.fugate@state.co.us](mailto:greg.fugate@state.co.us). No inquiries will be accepted after **5:00 p.m. MT on September 10, 2018**.

**E. SUBMISSION**

All proposals become the property of the State Auditor upon receipt and will not be returned to the bidder. The State Auditor shall have the right to use all ideas, or adaptations of these ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal will not affect this right.

**F. ACCEPTANCE OF PROPOSAL**

This RFP does not commit the State Auditor to award a contract, to pay any costs incurred in the preparation of a bid submitted in response to this request, or to procure or contract for services or supplies. The State Auditor reserves the right to accept or reject, in part or in its entirety, any or all bids received as a result of this RFP if, in the opinion of the State Auditor, it is in the best interest of the State to do so. The lowest cost proposal will not necessarily be selected. Final scope and price may be negotiated after selection of the engaged organization.

**G. PROPOSALS - SCHEDULE**

The following schedule will be followed:

1.	RFP available to prospective bidders	8/27/2018
2.	Prospective bidder's inquiry deadline (5:00 p.m. MT)	9/10/2018
3.	OSA response to inquiry deadline	9/14/2018
4.	<b>Proposal submission deadline (5:00 p.m. MT)</b>	<b>9/21/2018</b>
5.	Approximate bid selection date	10/3/2018
6.	Approximate contract date	10/17/2018

Any proposal received after **5:00 p.m. MT on September 21, 2018** will not be considered. The proposal must be submitted via email to Greg Fugate, Contract Monitor, [greg.fugate@state.co.us](mailto:greg.fugate@state.co.us). The proposal must be signed by a person legally authorized to bind the bidder.

**H. ADDENDUM OR SUPPLEMENT TO REQUEST FOR PROPOSAL**

The State Auditor reserves the right to issue amendments to this RFP prior to the closing date for submission of proposals. In the event that it becomes necessary to revise any part of this RFP, an addendum to this RFP will be provided to each prospective bidder.

**I. AWARD WITHOUT DISCUSSION**

The State Auditor reserves the right to make an award without further discussion of proposals received. Therefore, it is important that the proposal be submitted in the most complete terms possible from both the technical and cost standpoint.

**J. AWARD INFORMATION TO UNSUCCESSFUL FIRMS**

The State Auditor will notify all unsuccessful bidders after the award. No information will be released after the proposal submission deadline until an award has been made.

**K. JOINT VENTURES**

No joint venture proposals will be accepted. However, this requirement does not preclude the use of outside special consultants if deemed necessary by the engaged organization.

**L. STATE AUDITOR LIAISON**

The OSA's assigned contract monitor will be the liaison to the engaged organization throughout the evaluation. This individual will attend entrance/exit conferences and assist the engaged organization in understanding State Auditor requirements and reporting guidelines.

**M. AWARD OF BID**

The contract will be awarded to the bidder whose proposal will be most advantageous to the State of Colorado, price and other factors considered. The successful bidder will be awarded a contract for the scope detailed in this RFP or the scope negotiated through further discussion. *The successful bidder is expected to execute and adhere to the terms and conditions in the OSA's standard contract and its related exhibits. A copy of the OSA's standard contract and its related exhibits is included in Section IV - Supplemental Information of this RFP.*

**N. SUBMISSION OF INVOICES**

The engaged organization should submit monthly invoices for work completed. The State Auditor will withhold 10 percent of the total contract amount pending satisfactory completion of the evaluation.



## SECTION II

### INFORMATION THAT MUST BE INCLUDED IN PROPOSAL

All proposals *must* include the information requested in this section and be organized in the same manner as this section.

All proposals submitted to the OSA in response to this RFP are subject to the Colorado Open Records Act (CORA). *Any proprietary information your firm includes in the proposal should be clearly and specifically designated in the proposal.* Such information will be redacted from the proposal pursuant to 24-72-204(3)(a)(IV), C.R.S., allowing for the denial of inspection of records including trade secrets, before providing the proposal in response to a CORA request.

**A. TITLE PAGE**

The proposal will identify the RFP subject, organization's name, address, telephone number, name of contact person, and date.

**B. TABLE OF CONTENTS**

The proposal will include a clear identification of the material included in the bid proposal by section and page number.

**C. TRANSMITTAL LETTER**

Please limit the transmittal letter to two or three pages. Provide the names of individuals authorized to make representations for the organization and their titles, addresses, and telephone numbers.

**D. PROFILE OF THE ORGANIZATION**

The proposal must:

1. State whether the organization is local, national, or international.
2. Give the location of the office from which the work would be done and number of partners, shareholders, and managers and other professional staff employed at that office.
3. Describe the range of activities performed by the office from which the work would be done, including descriptions of or links to prior work products that demonstrate experience and expertise providing the services described in this RFP.

4. Affirm that the organization is independent for this audit engagement. Disclose any work performed for or on behalf of the District and explain why this work would not impair the organization's independence in performing this audit.
5. Affirm that the organization does not have any past history of substandard work (e.g., a prior engagement has been terminated for poor performance).
6. Provide information on any past, current, or anticipated claims (i.e., knowledge of pending claims) on respondent contracts; explain the litigation, the issue, and its outcome or anticipated outcome.
7. Provide a copy of the results of the organization's most recent external peer review if the organization plans to conduct the audit in accordance with generally accepted government auditing standards.
8. Provide no more than three references for similar work performed.

**E. QUALIFICATIONS OF ASSIGNED PERSONNEL**

Describe the proposed audit team's relevant experience and areas of expertise. The proposal must identify the principal staff (i.e., principals, managers, and supervisors/in-charges) who will work on the audit, including any specialists or subcontractors to be used. The proposal must include a resume of all principal staff highlighting their professional qualifications and similar audit and/or evaluation work that they have performed. Resumes must be included in an appendix.

**F. ORGANIZATION'S APPROACH TO THE AUDIT**

The proposal must describe in detail how the organization will accomplish the audit's goals and objectives outlined in this RFP. Proposals should describe the methodology, work approaches/steps, tools, and resources to be used to conduct the audit and develop all parts of a finding (as described in "Exhibit G – Developing and Presenting Findings" of the OSA's standard contract) for each problem identified.

**G. COMPENSATION**

1. The proposal must state the number of professional staff hours estimated to complete the work by staff level, the hourly rate, and the resulting total cost. The prospective bidder is advised that travel costs incurred in the performance of the audit engagement are reimbursable only as a part of the hourly rate and must be covered under said rate and will not be separately reimbursed.
2. The proposal should break out total hours estimated to: (1) complete each issue/objective/question and (2) write and revise findings and the final report.

3. The proposal must state the total inclusive maximum fee for which the work requested will be done.
4. The proposal should affirm that all prices, terms, and conditions will be held firm for at least 90 days after the bid opening.

**H. DELIVERY SCHEDULE**

The proposal must include a detailed proposed schedule of the work to be performed and deliverable due dates for the project milestones discussed in Section I, Part C of this RFP.

**I. ADDITIONAL DATA**

The organization may include additional information in this section that is considered essential to the proposal, *but has not been specifically provided in response to prior sections of this RFP.*

## **SECTION III**

### **PROPOSAL EVALUATION PROCESS**

#### **A. GENERAL**

An OSA evaluation team will judge the merits of proposals received in accordance with the general criteria defined below. The bidder is responsible for providing all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The evaluation team will select the bidder whose proposal is most responsive to the State Auditor's needs while being within available resources. The specifications within this RFP represent the minimum performance necessary for response.

During the evaluation process, the evaluation team may, at its discretion, request any one or all bidders to make oral presentations or answer questions about their proposals. Not all bidders may be asked to make such oral presentations.

#### **B. MANDATORY CRITERIA**

1. The organization is independent for the audit engagement.

#### **C. GENERAL CRITERIA**

1. Adequacy and completeness of the proposal with regard to the information specified in Section II of this RFP.
2. Experience and stability of the organization.
3. Qualifications and experience of staff, including subcontractors, specialists, and consultants to be assigned to the audit.
4. Comprehensiveness and appropriateness of the proposed work plan.
5. Proposed costs (number of hours and hourly rate).
6. Proposed time frame for meeting project milestones and completing the audit.

#### **A. TOTAL SCORE**

The evaluation team will assign scores to the proposals based on the established criteria. The State Auditor will make the final decision on the contract award.

**SECTION IV**  
**SUPPLEMENTAL INFORMATION**

Attached to this RFP is the following document:

- The OSA’s standard contract and related exhibits. *The successful bidder is expected to execute and adhere to the terms and conditions in the OSA’s standard contract and its related exhibits.*

The following website links provide additional information to assist in preparing the proposal:

- Colorado Energy Office – C-PACE Information  
<https://www.colorado.gov/pacific/energyoffice/colorado-c-pace>
- Colorado C-PACE Program Website  
<https://copace.com/>
- Colorado C-PACE Program Guide  
[https://copace.com/wp-content/uploads/CO\\_C-PACE\\_Program\\_Guide.pdf](https://copace.com/wp-content/uploads/CO_C-PACE_Program_Guide.pdf)

Colorado Revised Statutes (New Energy Improvement District and C-PACE Program are in Title 32, Article 20):

<http://leg.colorado.gov/colorado-revised-statutes>

- U.S. Department of Energy Website –Information About PACE Programs  
<https://www.energy.gov/eere/slsc/property-assessed-clean-energy-programs>
- Colorado Office of the State Auditor Website  
<http://www.colorado.gov/auditor>
- Example of Recent OSA Performance Audit Report – State Land Board (October 2017)  
[http://leg.colorado.gov/sites/default/files/documents/audits/1681p\\_state\\_land\\_board.pdf](http://leg.colorado.gov/sites/default/files/documents/audits/1681p_state_land_board.pdf)

**STATE OF COLORADO**  
**State Auditor and**  
**Legislative Audit Committee**  
**Performance Audit Contract for the**  
**Audit of the INSERT NAME OF ENTITY**  
**With**  
**INSERT NAME OF CONTRACTOR**

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**1. PARTIES**

This Contract (“Contract”) is entered into by and between [insert contractor’s name] (“Contractor”), and the STATE OF COLORADO (the “State”) acting by and through and for the use and benefit of the State Auditor and the Legislative Audit Committee. Contractor and the State agree to the following terms and conditions specified in this contract.

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

The Effective Date of this Contract is the date on which this Contract has been approved and signed by all of the Parties, including on behalf of the State, the State Auditor or the State Auditor’s designee, the Chair of the Legislative Audit Committee, and, after legal review, by the Director of the Office of Legislative Legal Services or the Director’s designee. This Contract is not effective or enforceable before the Effective Date, and the State is not liable to pay or reimburse Contractor for any Work performed or costs or expenses incurred by the Contractor before the Effective Date or after the expiration or other termination of this Contract.

**3. RECITALS**

**A. Authority, Appropriation, And Approval**

Authority to enter into this Contract exists in §2-3-103(1), C.R.S., funds have been budgeted, appropriated, and otherwise made available pursuant to Fund 1000, Appropriation Code MGFCC4010, Contract Encumbrance Number 20XX-XX, and a sufficient unencumbered balance of the funds remains available for payment. Required approvals, clearance, and coordination have been accomplished from and with appropriate agencies.

**B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained in this Contract, including the Exhibits attached to and incorporated by reference in this Contract are sufficient and adequate to support this Contract.

**C. Purpose**

The State is engaging Contractor to render professional auditing services as specified in this Contract, including the Exhibits attached to and incorporated by reference into this Contract.

**D. References**

Unless the context clearly otherwise requires, all references in this Contract to sections (whether spelled out or using the § symbol), subsections, or Exhibits refer to sections, subsections, or Exhibits contained in this Contract or incorporated by reference into this Contract.

**4. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

**A. Audit Report**

“Audit Report” means the final performance audit report due to the State in accordance with this Contract.

**B. Audited Agency**

“Audited Agency” means the [insert department/agency name].

**C. Business Day**

“Business Day” means any day on which the State is open and conducting business, but does not include Saturday, Sunday, or any day on which the State observes a legal holiday listed in §24-11-101(1), C.R.S.

**D. CJI**

“CJI” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau

of Investigation, Criminal Justice Information Services Security Policy and all criminal justice records, as defined in §24-72-302, C.R.S.

**E. Contract**

“Contract” means this Contract, including the Exhibits attached to and incorporated by reference into this Contract, and any other documents incorporated by reference into this Contract, and any amendments to this Contract or additional Exhibits, or other documents incorporated into this Contract after the Effective Date.

**F. Contract Funds**

“Contract Funds” means the maximum amount of funds available for payment by the State to Contractor pursuant to section 7.A. of this Contract.

**G. CORA**

“CORA” means the “Colorado Open Records Act”, §§24-72-200.1, *et seq.*, C.R.S.

**H. Effective Date**

“Effective Date” means the date on which this Contract has been approved and signed by all of the Parties and, after legal review, by the Director of the Office of Legislative Legal Services or the Director’s designee.

**I. Exhibits**

“Exhibits” means the following Exhibits that are attached to and incorporated by reference into this Contract: **Exhibit A** (Statement of Work), **Exhibit B** (Request for Proposal), **Exhibit C** (Modifications to Contractor’s Proposal), **Exhibit D** (Contractor’s Proposal), **Exhibit E** (Information Security Policy for Contractors), **Exhibit F** (Compensation and Procedures for Billing), **Exhibit G** (Developing and Presenting Performance Audit Findings), and **Exhibit H** (Reporting Requirements and Format for Separately Issued Reports).

**J. Incident**

“Incident” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Confidential Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

**K. OSA**

“OSA” means the Office of the State Auditor.

**L. Party or Parties**

“Party” means the State or Contractor and “Parties” means both the State and Contractor.

**M. PCI**

“PCI” means any payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.

**N. PHI**

“PHI” means any protected health information, including, without limitation, any information, whether oral or recorded in any form or medium that: (i) relates to the past, present, or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and (ii) either identifies the individual or provides a reasonable basis to believe that it can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.



**O. PII**

“PII” means personally identifiable information including, without limitation: (i) any information maintained by the State about an individual that can be used to distinguish or trace the individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.

**P. Proposal**

“Proposal” means Contractor’s Proposal dated [insert date]. [If applicable, add: “, including the modification(s) to the proposal dated [insert date(s)].]

**Q. Request for Proposal or RFP**

“Request for Proposal” or “RFP” means the State’s Request for Proposal issued [insert date]. [If applicable, add: “, including the supplement(s) to the RFP dated [insert date].]

**R. Services**

“Services” means the required performance audit services to be performed by Contractor pursuant to this Contract.

**S. State Auditor**

“State Auditor” means the Colorado State Auditor.

**T. State Confidential Information**

“State Confidential Information” means any and all State Records not subject to disclosure under CORA. State Confidential Information includes, but is not limited to, PII, PHI, PCI, Tax Information, CJ, and State personnel records not subject to disclosure under CORA.

**U. State Fiscal Rules**

“State Fiscal Rules” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

**V. State Fiscal Year**

“State Fiscal Year” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

**W. State Records**

“State Records” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

**X. Subcontractor**

“Subcontractor” means a third party, if any, engaged by Contractor to aid in performance of its obligations.

**Y. Tax Information**

“Tax Information ” means federal and State tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to, all information defined as Federal Tax Information (FTI) in Internal Revenue Service Publication 1075.

**Z. Work**

“Work” means the tasks and activities that Contractor is required to perform to fulfill its obligations under this Contract, including the performance of the Services and delivery of the Work Product.

**AA. Work Product**

“Work Product” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys,

maps, correspondence, communication, materials, ideas, concepts, know-how, and any other results of the Work. Work Product also includes the Audit Report, audit findings, oral testimony, and audit workpapers, whether referred to in relevant statutes as “workpapers” or “work papers,” subject to §18 of this Contract.

**BB. Terms Defined in Exhibits**

Any term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in the Exhibit.

**5. TERM AND EARLY TERMINATION**

**A. Term-Work Commencement**

The Parties’ respective performances under this Contract shall commence on the Effective Date. This Contract terminates on the earlier of thirty (30) days after the Audit Report has been released by the Legislative Audit Committee or [insert date], unless sooner terminated as specified in this Contract. The State may terminate this Contract for its convenience for any reason, without penalty to the State, upon thirty (30) days prior written notice to Contractor.

**B. Early Termination**

Upon early termination, Contractor shall not incur further obligations or render further performance under this Contract past the effective date of the notice of termination and shall terminate outstanding subcontracts with Subcontractors. Contractor shall deliver to the State all Work Product to the extent completed as of the termination date. Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor. Contractor shall immediately return to the State all materials owned by the State in the possession of Contractor in which the State has an interest. The State shall reimburse Contractor for accepted performance up to the termination date.

**6. STATEMENT OF WORK**

**A. Completion**

Contractor shall complete the Work on or before [insert date].

**B. Services and Work Product**

Contractor shall provide the Services and deliver the Work Product necessary to complete the Work. Contractor shall accomplish the provision of Services and delivery of Work Product using the Contract Funds only.

**C. Employees**

All persons employed by Contractor or Subcontractors to perform Work under this Contract. Contractor’s or Subcontractors’ personnel for all purposes of this Contract are not employees of the State for any purpose as a result of this Contract.

**7. PAYMENTS TO CONTRACTOR**

The State, in accordance with the provisions of this §7, shall pay Contractor in the amounts and using the methods set forth below:

**A. Maximum Amount**

The maximum amount payable under this Contract to Contractor by the State is \$[insert amount], as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract and shall be made as set forth in **Exhibit F** (Compensation and Procedures for Billing). The estimated amount payable by the State to Contractor during State Fiscal Year 20XX-20XX is \$[insert amount], and the estimated amount payable by the State to Contractor during State Fiscal Year 20XX-20XX is \$[insert amount]. The exact funding split between the State Fiscal Years, if applicable, will be determined by the State based on amounts that have been budgeted, appropriated, or otherwise made available for this Contract.

**B. Payment**

**i. Interim and Final Payments**

Contractor shall initiate any payment requests by submitting invoices to the State in a form approved by the State and in the manner specified in **Exhibit F**.

**ii. Interest**

The State shall fully pay each invoice within forty-five (45) days of its receipt if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within forty-five (45) days bear interest on the unpaid balance beginning on the 46th day at the rate of one percent per month until paid in full. Interest does not accrue on unpaid amounts that are subject to a good faith dispute between Contractor and the State. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and any such separate billing shall reference the delinquent payment, the number of days' interest to be paid, and the one percent interest rate.

**iii. Recovery of Erroneous Payments and Unexpended or Excess Funds**

At the State's sole discretion, any payments made to Contractor in error for any reason, including any overpayments or improper payments, and any unexpended or excess funds received by Contractor, may be collected as a debt due to the State and may be recovered from Contractor by deduction from subsequent payments under this Contract or payments to be made under other contracts, grants, or agreements between the State and Contractor or by other appropriate methods. Contractor shall pay such overpayments, improper payments, or funds directly to the State.

**C. Use of Funds**

Contract Funds shall be used only for costs identified in this Contract.

**8. REPORTING - NOTIFICATION**

Reports required under this **§8** shall be in the form and subject to the procedures prescribed by the State.

**A. Performance, Progress, Personnel, and Funds**

Contractor shall comply with all reporting requirements forth in the Exhibits.

**B. Litigation Reporting**

Upon being served in an action before a court or an administrative decision making body with any pleading that is related to this Contract or that may affect Contractor's ability to perform its obligations under this Contract, Contractor, within ten (10) days, shall notify the State of the action and deliver copies of the pleadings to the State's principal representative as identified in **§17** of this Contract. If the State's principal representative is not then serving, Contractor shall deliver notice and copies to the State Auditor.

**C. Noncompliance**

Contractor's failure to provide reports, notification of legal action, or copies of pleadings to the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds, termination, or both, as provided under this Contract.

**D. Subcontracts**

Contractor shall submit copies of any and all subcontracts entered into by Contractor to perform its obligations under this Contract to the State or its principal representative upon request by the State.

**9. CONTRACTOR RECORDS**

**A. Maintenance**

Except as otherwise required with respect to State Records following the expiration or termination of this Contract by **§10.C** of this Contract, Contractor shall maintain a complete file of all documents, records, communications, notes, and other materials, including but not limited to all Work Product, pertaining in any manner to the Work or the delivery of Services,

including Work performed and Services delivered by Subcontractors. Unless Contractor receives written notice of an extension from the State, the federal government, or another duly authorized agent of a governmental agency, Contractor shall maintain the records until the last to occur of: (i) the date five (5) years after the date on which the State accepts the Audit Report or, in the case of early termination, terminates this Contract; (ii) the date on which any pending disputes relating to this Contract are resolved; or (iii) if the performance of this Contract is being audited or Contractor receives notice that an audit is pending, the date on which the audit is completed and its findings have been resolved (the "Record Retention Period").

**B. Inspection**

Contractor, at no additional charge, shall permit the State or its agent(s), any successor auditor, the federal government, and any other duly authorized agent of a governmental agency to access and inspect, excerpt, and copy Contractor's work papers and reports related to this Contract during the Record Retention Period to assure compliance with the terms of this Contract, to evaluate performance under this Contract, or for any other purpose required by the State. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals.

**C. Monitoring**

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures determined by the State that do not unduly interfere with Contractor's performance of the Work.

**10. WORK PRODUCT-CONFIDENTIAL INFORMATION-STATE RECORDS**

**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, approved by the State in accordance with §2-3-103(3), C.R.S., or otherwise approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) to the extent Contractor receives, transmits, processes, and/or stores Federal Tax Information (FTI) on behalf of the State, the most recently promulgated IRS Publication 1075 for all Federal Tax Information, and (ii) the federal Health Insurance Portability and Accountability Act for all PHI. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

**B. Other Entity Access and Nondisclosure Agreements**

Contractor may provide State Records to its agents, employees, assigns, and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure that all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions that are at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times at which the agent, employee, assign, or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of the signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

**C. Use, Security, and Retention**

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential

Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or if specifically instructed to do so by the State, destroy the State Records and certify to the State that it has done so as directed by the State. If any law, regulation, or other provision of this Contract prevents Contractor from returning or destroying State Confidential Information, Contractor warrants that it will guarantee the confidentiality of, and cease to use, the State Confidential Information.

**D. Incident Notice and Remediation**

If Contractor becomes aware of any Incident, it shall notify the State as soon as permitted and in accordance with applicable law and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor is responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan approved by the State at no additional cost to the State.

**11. CONFLICTS OF INTEREST**

**A. Actual Conflicts of Interest**

Contractor shall not engage in any business or activities or maintain any relationships that create a conflict of interest by conflicting in any way with the full performance of Contractor's obligations under this Contract. Such a conflict of interest arises when a Contractor's or Subcontractor's employee, officer, or agent: (i) offers or provides any tangible personal benefit to a State employee, a State employee's partner, or a member of a State employee's immediate family; or (ii) discusses, arranges for, or accepts financial or performance auditing work or non-auditing work not identified in this Contract with the Audited Agency during the term of this Contract without the express written approval of the State.

**B. Apparent Conflicts of Interest**

Contractor acknowledges that with respect to this Contract even the appearance of a conflict of interest is harmful to the State's interests. Accordingly, absent the State's prior written approval, Contractor shall refrain from any practices, activities, or relationships that reasonably appear to conflict with Contractor's full performance of its obligations under this Contract. Contractor shall also provide written notice to the State, in accordance with §17 of this Contract, and obtain the State's prior written approval, before entering into a contract or engagement with another State agency, department, or division that is subject to audit by the State.

**C. Disclosure of Conflicts of Interest**

If a conflict of interest or the appearance of a conflict of interest arises, or if Contractor is uncertain whether a conflict of interest or the appearance of a conflict of interest has arisen, Contractor shall submit to the State a disclosure statement that sets forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict of interest is a breach of this Contract. Contractor shall also comply with the applicable revision of *Government Auditing Standards* issued by the Comptroller General of the United States with respect to any actual or perceived conflicts of interest or threats to Contractor's independence arising from the performance of this Contract.

## **12. REPRESENTATIONS AND WARRANTIES**

Each Party has relied on the representations and warranties of the other Party set forth below in entering into this Contract.

### **A. Qualifications, Standards, and Manner of Performance**

Contractor represents and warrants that it is qualified and, if applicable, warrants that it is licensed in accordance with applicable laws and regulations, to perform the Work and Services and deliver the Work Product. Contractor shall perform its obligations under this Contract in accordance with the applicable revision of *Government Auditing Standards* issued by the Comptroller General of the United States.

### **B. Legal Authority – Contractor Signatory**

Contractor represents and warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, bylaws, and applicable laws to exercise that authority and to lawfully authorize its undersigned signatory to execute this Contract, or any part of this Contract, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Contract within fifteen (15) days of receiving the request.

### **C. Licenses, Permits, and Other Authorizations**

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term of this Contract it will have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations under this Contract. Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform its obligations under this Contract, without reimbursement by the State or any adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, required to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and will continue to maintain any applicable certificate of authority required to transact business in the State and that it has designated a registered agent in the State to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits, or other authorizations necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and is grounds for termination of this Contract.

### **D. Contractor Independence**

Contractor should be independent in performing the audit engagement. The State represents and warrants that it will not request or require Contractor to surrender Contractor's "independence" as that term is professionally understood and used with respect to the applicable revision of *Government Auditing Standards* issued by the Comptroller General of the United States.

### **E. Contractor Compliance with IRS Publication 1075**

To the extent that Contractor receives, transmits, processes, and/or stores Federal Tax Information (FTI) on behalf of the State, Contractor will comply with IRS Publication 1075. Contractor and Contractor's employees with access to or who use FTI must meet the background investigation requirements set forth in IRS Publication 1075.

### **F. Disclaimer**

Except for the representations and warranties expressly stated in this Contract, the Parties disclaim all representations and warranties, written or oral, express or implied.

## **13. INSURANCE**

Contractor shall obtain and maintain, and shall ensure that each Subcontractor obtains and maintains, insurance policies issued by insurance companies approved by the State at all times during the term of this Contract as follows and in accordance with the following requirements:

**A. Workers' Compensation**

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

**B. General Liability**

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

**C. Automobile Liability**

Automobile liability insurance covering any auto (including owned, hired, and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

**D. Protected Information**

Liability insurance covering all losses of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJJ, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

**E. Professional Liability Insurance**

Professional liability insurance covering any damages caused by an error, omission, or negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

**F. Crime Insurance**

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

**G. Additional Insured**

The State must be named as additional insured on all commercial general liability policies required of Contractor and Subcontractors.

**H. Primacy of Coverage**

Coverage required of Contractor and each Subcontractor must be primary over any insurance or self-insurance program carried by Contractor or the State.

**I. Cancellation**

The above insurance policies must include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least thirty (30) days written prior notice to Contractor, and Contractor shall forward any such notice to the State in accordance with §16 of this Contract within seven (7) days of Contractor's receipt of such notice.

**J. Subrogation Waiver**

All insurance policies secured or maintained by Contractor or its Subcontractors as required by this Contract must include clauses stating that each carrier waives all rights of recovery under subrogation or otherwise against Contractor, the State, and the State's agencies, institutions, organizations, officers, agents, employees, and volunteers.

**K. Public Entities**

If Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the “GIA”), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor’s obligations under the GIA.

**L. Certificates**

Contractor shall provide to the State certificates evidencing Contractor’s insurance coverage required in this Contract within seven (7) Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven (7) Business Days following the Effective Date, except that, if Contractor’s subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven (7) Business Days following Contractor’s execution of the subcontract. No later than fifteen (15) days before the expiration date of Contractor’s or any Subcontractor’s coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

**14. DISPUTE RESOLUTION**

Any dispute concerning the performance of this Contract that cannot be resolved by the designated Contract representatives shall be referred in writing to the State Auditor and the Contractor’s managing partner or similar executive-level decision maker for resolution. The State Auditor and the Contractor’s managing partner or similar executive-level decision maker shall informally discuss the dispute and attempt to resolve it. If the State Auditor and the Contractor’s managing partner or similar executive-level decision maker are able to agree to a mutual resolution of the dispute, the resolution will be formalized in writing in accordance with this Contract. If either Party finds, at any time, that the attempted resolution of the dispute has failed, at which time each Party may pursue any and all remedies, including without limitation, those available under this Contract, at law or in equity.

**15. BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Contract, each of the following is a breach of this Contract:

**i. Material Obligations**

The failure of Contractor to perform, in whole or in part or in a timely or satisfactory manner, any of its material obligations under this Contract to the satisfaction of the State.

**ii. Satisfactory Performance**

A determination by the State, in its reasonable discretion, that satisfactory performance of Contractor’s obligations under this Contract is substantially endangered.

**iii. Bankruptcy**

The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property if the proceedings are not vacated or fully stayed within twenty (20) days after being instituted or occurring.



**iv. Material Misrepresentation**

Any statement, representation, or certification furnished by Contractor in connection with the RFP, Contractor's Proposal, Modifications to Contractor's Proposal, or this Contract that is false, deceptive, incorrect, or incomplete in any material respects.

**v. Failure to Timely Deliver Reports**

Failure by Contractor to complete and deliver the Audit Report or Work Product by the date specified in §6(A) of this Contract, unless Contractor can show that the delinquency resulted from causes beyond its control, such as failure of the Audited Agency to provide, by the date specified in a written request from Contractor: requested documentation, records, or information; records that are auditable; or responses to Contractor's findings and recommendations. Contractor shall allow a reasonable amount of time for the Audited Agency to provide the requested documentation, records, or information and responses.

**B. Notice and Cure Period**

In the event of a breach, the aggrieved Party shall give written notice specifying the nature of the breach to the other Party in the manner provided in §17 of this Contract. If a breach by Contractor is not cured within twenty (20) days of receipt of written notice, or, if a cure cannot be completed within twenty (20) days, the cure has not begun within twenty (20) days and been pursued with due diligence, the State may exercise any of the remedies set forth in §16 of this Contract. Notwithstanding anything to the contrary in this Contract, the State, in its sole discretion, need not provide advance notice of a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or prevent immediate public crisis.

**16. REMEDIES**

If Contractor fails to cure a breach of this Contract in accordance with §15(B) of this Contract, the State may exercise any or all of the remedies available to it, including but not limited to the following remedies, in its sole discretion, concurrently or consecutively.

**A. Termination for Breach**

The State may terminate this Contract upon written notice to Contractor. Exercise by the State of this right is not be a breach of its obligations under this Contract.

**B. Liquidated Damages**

If Contractor fails to complete and deliver the Audit Report by the date specified in §6(A) of this Contract, Contractor shall pay liquidated damages to the State of \$100 per day for each day delinquent. To the extent that Contractor's failure is excused under §15(A)(v) of this Contract, Contractor is not required to pay the liquidated damages. The Parties agree that the damages from Contractor's failure to timely deliver the Audit Report are difficult to estimate, and that the amount of liquidated damages specified in this §16(B) represents a reasonable estimation of damages that the State will incur due to late performance. Assessment of liquidated damages is not exclusive and does not limit the remedies available to the State, at law or in equity, for other breaches of this Contract by Contractor.

**C. Withhold Payment**

The State may withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

**D. Deny Payment**

The State may deny payment for obligations not performed if, due to Contractor's actions or inactions, the obligation cannot be performed or, if performed, would be of no value to the State. Any denial of payment must be reasonably related to the value to the State of the obligations not performed.

**E. Noncompliance with Federal Regulations**

Contractor is liable for any and all penalties applied by the federal government due to noncompliance with federal regulations by Contractor, a Subcontractor, or any of Contractor's employees.

**17. NOTICES AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required or permitted to be given to a Party under this Contract must be in writing and must be delivered: (i) by hand with receipt required; (ii) by certified or registered mail to the Party's principal representative at the address set forth below; or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers notice to the other Party by email and the email is undeliverable, then, unless the delivering Party is provided with an alternative email address, the Party shall deliver the notice by hand with receipt required or by certified or registered mail to the other Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §17 without making a formal amendment to this Contract. Unless otherwise provided in this Contract, notices are effective upon delivery in accordance with this §17.

**A. State:**

Kerri Hunter, Deputy State Auditor
Office of the State Auditor
1525 Sherman St., 7 <sup>th</sup> Floor
Denver, Colorado 80203-1700
kerri.hunter@state.co.us

**B. Contractor:**

Name, Title
Company Name
Address
City, State Zip
Email

**C. Media**

The State is the official spokesperson to the news media pertaining to the Work, Services, and Work Product. Contractor shall forward immediately to the State any inquiries from the news media pertaining to the Work, Services, or Work Product.

**18. RIGHTS IN WORKPAPERS**

The workpapers developed by Contractor during the performance of the Services are the exclusive property of Contractor. The State has the right to copy the workpapers. Except as provided in §§9B and 10 of this Contract, Contractor shall not provide the workpapers to third parties or permit third parties to review, access, or use the workpapers unless, and only to the extent that, the Legislative Audit Committee has specifically approved disclosure of the workpapers in accordance with §2-3-103(3), C.R.S., and the State has given Contractor prior written consent to disclose the workpapers. Contractor shall forward immediately to the State any requests for workpapers that Contractor receives pursuant to CORA.

**19. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State and the State's agencies, boards, commissions, committees, bureaus, offices, employees, and

officials is controlled and limited by the provisions of the Colorado Governmental Immunity Act §§24-10-101, *et seq.*, C.R.S., the federal Torts Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. sec. 1346(b), and the risk management statutes, §§24-30-1501, *et seq.*, C.R.S.

## **20. GENERAL PROVISIONS**

### **A. Assignment and Subcontracts**

Contractor's rights and obligations under this Contract are personal and may not be transferred, assigned, or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such prior written consent is void. Any assignment, transfer, or subcontracting of Contractor's rights or obligations under this Contract that is approved by the State is subject to the provisions of this Contract. Upon the request of the State, Contractor shall provide to the State a copy of any subcontract entered into by Contractor in connection with this Contract. Contractor is solely responsible for all aspects of subcontracting arrangements and performance, and any subcontract entered into by Contractor in connection with this Contract must comply with all applicable federal and state laws and regulations and provide that it is subject to all provisions of this Contract and governed by the laws of the State.

### **B. Binding Effect**

Except as otherwise provided in §20(A) of this Contract, all provisions of this Contract, including the benefits and burdens, extend to and bind the Parties' respective successors and assigns.

### **C. Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. Unless the context clearly otherwise requires, all references in this Contract to sections (whether spelled out or using the § symbol), subsections, or Exhibits refer to sections, subsections, or Exhibits contained in this Contract or incorporated by reference into this Contract.

### **D. Counterparts**

This Contract may be executed in multiple identical original counterparts, each of which is an original, but all of which, taken together, constitute one and the same agreement.

### **E. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties related to the Work, Services, and Work Product and all prior representations and understandings related to the Work, Services, and Work Product, whether oral or written are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract do not have any force or affect whatsoever, unless embodied in this Contract.

### **F. Jurisdiction and Venue**

All suits or actions related to this Contract must be filed and all proceedings related to this Contract must be held in the State of Colorado, and exclusive venue is in the City and County of Denver.

### **G. Modification**

Except as otherwise provided in this Contract, any modification of this Contract is only effective if agreed to in a formal written amendment to this Contract that is properly executed and approved in accordance with applicable State law.

### **H. Statutes, Rules, Regulations, and Other Authority**

Unless otherwise specifically provided, any reference in this Contract to a federal or state statute, rule, or regulation or to any other source of legal or policy authority refers to the current version of the statute, rule, regulation, or other authority including any amendments or changes to the authority made after the Effective Date.

### **I. Order of Precedence**

If a conflict or inconsistency arises between any provision contained in the main body of this Contract and any Exhibit, the conflict or inconsistency must be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions;
- ii. The remaining provisions of the main body of this Contract;
- iii. **Exhibit A** (Statement of Work);
- iv. **Exhibit B** (Request for Proposal);
- v. **Exhibit C** (Modifications to Contractor's Proposal);
- vi. **Exhibit D** (Contractor's Proposal);
- vii. **Exhibit E** (Information Security Policy for Contractors);
- viii. **Exhibit F** (Compensation and Procedures for Billing);
- ix. **Exhibit G** (Developing and Presenting Performance Audit Findings);
- x. **Exhibit H** (Reporting Requirements and Format for Separately Issued Reports).

**J. Severability**

The invalidity or unenforceability of any provision of this Contract does not affect the validity of or enforceability of any other provision of this Contract, which remains in full force and effect, so long as the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Parties.

**K. Survival of Certain Contract Terms**

Any provision of this Contract that imposes an obligation on a Party that begins after or continues after the termination or expiration of this Contract survives the termination or expiration of this Contract and is enforceable by the other Party.

**L. Taxes**

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C. Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate Registry No. 84-730123K) and from all State and local government sales and use taxes under §§39-26-704(1), and 29-2-105(1)(d)(I), C.R.S. (Colorado Sales Tax Exemption Identification Number 98-20565). The State is not liable for the payment of excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor is solely responsible for any exemptions from the collection of excise, sales, or use taxes that Contractor may wish to have in place in connection with this Contract.

**M. Third Party Beneficiaries**

Except for a person who assumes Contractor's rights and obligations under this Contract as a successor or assign in accordance with §§20(A) and 20(B) of this Contract, this Contract does not and is not intended to confer any rights, obligations, or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations under this Contract are reserved solely to the Parties. Any services or benefits that third parties receive as a result of this Contract are incidental to the Contract and do not create any rights for the third parties.

**N. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicitly or by lack of enforcement, does not operate as a waiver of the right, power, or privilege, and a single or partial exercise of any right, power, or privilege does not preclude any other or further exercise of the right, power, or privilege.

**O. CORA Disclosure**

This Contract is a public record that, to the extent not prohibited by federal law, is subject to public release through CORA.

**P. Standard and Manner of Performance**

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill, and diligence in Contractor's industry, trade, or profession.

**Q. Indemnification**

**i. General Indemnification**

Contractor shall indemnify, save, and hold harmless the State and the State's employees, agents, and assignees ("Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards, attorney's fees and costs, and other amounts claimed by third parties and incurred by any of the Indemnified Parties to the extent caused by any negligence, intentional, or deliberate act or omission by Contractor or Contractor's employees, agents, Subcontractors, or assignees in connection with this Contract.

**ii. Confidential Information Indemnification**

Disclosure or use of State Confidential Information by Contractor in violation of this Contract may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties against any and all costs, expenses, claims, damages, liabilities, court awards, attorneys' fees and costs, and other amounts, claimed by third parties and incurred by the State to the extent caused by any act or omission by Contractor or Contractor's employees, agents, assigns, or Subcontractors that violates this Contract.

**iii. Intellectual Property Indemnification**

Contractor shall indemnify, save, and hold harmless the Indemnified Parties against any and all costs, expenses, claims, damages, liabilities, court awards, and other amounts, including attorneys' fees and costs, incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

**R. Limitation of Contractor Liability**

Any liability of Contractor and its personnel to the State for any breach of this contract or act or omission that directly damages the State is limited to the amount of the fee to be paid by the State to Contractor under this Contract. This limitation does not apply to any requirement of this Contract that Contractor indemnify the State for liabilities of the State to any third party that result from any negligent, intentional, or deliberate acts or omissions of Contractor.

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## **21. COLORADO SPECIAL PROVISIONS**

### **A. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **B. GOVERNMENTAL IMMUNITY.**

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671, *et seq.*

### **C. INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall: (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law; (ii) provide proof thereof when requested by the State; and (iii) be solely responsible for its acts and those of its employees and agents.

### **D. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### **E. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

### **F. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

### **G. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation,

immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**H. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**I. VENDOR OFFSET. §§24-30-202 (1) and 24-30-202.4, C.R.S.**

*[Not applicable to intergovernmental agreements]* Subject to §24-30-202.4 (3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**J. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101, *et seq.*, C.R.S.**

*[Not applicable to agreements related to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor: (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed; (ii) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract; (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice; and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, institution of higher education, or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or §8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**K. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she: (i) is a citizen or otherwise lawfully present in the United

States pursuant to federal law; **(ii)** shall comply with the provisions of §24-76.5-101, *et seq.*, C.R.S.; and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S., prior to the Effective Date of this Contract.

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**22.SIGNATURE PAGE**

Contract Routing Number 20XX-XX

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;"><b>CONTRACTOR</b></p> <p style="text-align: center;"><b>[INSERT NAME OF CONTRACTOR]</b></p> <p>By: _____ Title: _____</p> <hr/> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> <i>Colorado Office of the State Auditor</i> Dianne E. Ray, State Auditor</p> <hr/> <p style="text-align: center;">By: Dianne E. Ray, State Auditor</p> <p style="text-align: center;">Signatory avers that Contractor has not begun performance or that a Statutory Violation waiver has been requested</p> <p style="text-align: center;">Date: _____</p> <hr/> <p style="text-align: center;">Legislative Audit Committee Chair</p> <hr/> <p style="text-align: center;"><b>LEGAL REVIEW</b> <i>Office of Legislative Legal Services</i> Sharon L. Eubanks, Director</p> <p>By: _____ Jason A. Gelender, Managing Senior Attorney (designee of Sharon L. Eubanks, Director)</p> <p style="text-align: center;">Date: _____</p>
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## **23. EXHIBIT A – STATEMENT OF WORK**

### **1. GENERAL DESCRIPTION**

Contractor shall conduct a performance audit of the Audited Agency in a manner consistent with the terms and conditions of the Contract and its Exhibits and in accordance with the applicable revision of *Government Auditing Standards* issued by the Comptroller General of the United States.

### **2. CONTRACTOR’S OBLIGATIONS**

The Work to be performed by Contractor includes the following:

#### **A. Scope**

Contractor’s audit of the Audited Agency must include the following:

1. [ADD detailed description of work to be completed.]
2. As it performs the Work, Contractor shall maintain an awareness of any areas beyond the scope of the Services in which the Audited Agency may not be carrying out the Audited Agency’s programs in an effective and efficient manner. Contractor shall discuss any such areas with the State to determine whether the State desires Contractor to expand the scope of the Services of this Contract. The cost of such additional Services are not included within the scope of this Contract, and any additional Services shall be subject to negotiation and set forth in a separate agreement among Contractor, the State Auditor, and the Legislative Audit Committee.

#### **B. Review by State**

During the performance of Services under this Contract and prior to completion of the Work by the date specified in §6(A) of this Contract, the State has access to and the right to review Contractor’s Work and Work Product, whether in draft or final form, for acceptability and to provide guidance, direction, and feedback, and to suggest revisions. Contractor may not submit written findings or the Audit Report, whether in draft or final form, to the Audited Agency until they are deemed acceptable and approved by the State.

#### **C. Availability**

Contractor, upon the request of the State, shall furnish copies of Contractor’s work programs developed pursuant to this Contract and make all other workpapers available to the State for review or use in future audits or evaluations, at no additional charge to the State.

#### **D. Reports**

Contractor shall prepare and deliver the Audit Report to the State no later than [Insert Date], unless the State has approved an extension of time. If Contractor becomes aware that the due date for the Audit Report cannot be met, Contractor shall notify the State in writing of the reasons for the delay and identify a specific date when the Audit Report will be delivered. For a separately issued Audit Report, Contractor shall deliver to the State up to 100 copies of the bound report as determined by the State at the time of report finalization. Acceptable binding formats for the Audit Report are limited to spiral, comb, or glued bindings; 3-ring bindings are not acceptable. Contractor shall also deliver to the State an electronic copy of the Audit Report in unprotected Adobe PDF format or any other format prescribed by the State.

#### **E. Oral Presentations**

Contractor shall make an oral presentation of the Audit Report to the Legislative Audit Committee and, if applicable and upon notification by the State, one other legislative committee.

#### **F. Entrance/Exit Conferences**

The State shall participate in all entrance and exit conferences between the Audited Agency and Contractor, as well as other critical meetings, such as those dealing with audit findings.

**G. Fraud**

If Contractor become aware of fraud or indications of fraud affecting the Audited Agency, Contractor shall notify the State immediately. Contractor shall follow guidance contained in the applicable revision of *Government Auditing Standards* issued by the Comptroller General of the United States regarding the reporting of such fraud or indications of fraud.

**3. PERSONNEL**

**A. Contract Monitor**

Contractor’s performance under this Contract shall be monitored by [name of contract monitor], an employee or agent of the State, who is hereby designated as the Contract Monitor. The Contract Monitor shall review Contractor’s Work and Work Product, attend key meetings (e.g., entrance and exit conferences), and act as a liaison between the OSA, Contractor, and the Audited Agency. With the exception of contract monitoring activities, and unless otherwise noted in this Contract, the State shall not be required to provide any additional staff time in connection with the Services provided or Work performed.

**B. Other Key Personnel**

The key personnel identified by Contractor in the Contractor’s Proposal are deemed to be essential to the Work being performed under the Contract.

**C. Replacement**

Contractor shall immediately notify the State if any key personnel cease to be employed by Contractor. Before diverting any key personnel to other programs, Contractor shall give the State fifteen (15) days advance notice and shall submit to the State justification, including proposed personnel substitutions, in sufficient detail to permit evaluation of the impact on the Contractor’s performance of the Work. Contractor shall not divert any key personnel without the prior written consent of the State, which the State shall not unreasonably withhold. Contractor shall replace any key personnel with personnel of substantially equal or greater ability and qualifications to perform the Work.

**4. ACCEPTANCE CRITERIA**

If the State determines that the Work or Work Product is unacceptable (either before or after a draft or a final Audit Report is issued) due to Contractor’s failure to comply with applicable auditing standards or satisfy any requirements included in this Contract, the State, at the State’s direction, may require Contractor to re-perform the Work at its own expense and submit a revised Work Product. The State’s right to reject Contractor’s draft or final Audit Report because of the failure to comply and Contractor’s obligation to re-perform or revise extend throughout the term of this Contract and continue for one (1) full year after the termination of this Contract.

**5. PAYMENTS**

Payments shall be made in accordance with **Exhibit F** and any other applicable provisions of this Contract.

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**24. EXHIBIT B – REQUEST FOR PROPOSAL**

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**25. EXHIBIT C – MODIFICATIONS TO CONTRACTOR’S PROPOSAL**

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**26. EXHIBIT D –CONTRACTOR’S PROPOSAL**

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## **27. EXHIBIT E - INFORMATION SECURITY POLICY FOR CONTRACTORS**

### **Applicability**

This policy applies to all OSA Contractors at all locations who are conducting audits or professional services on behalf of the OSA using State of Colorado information, electronic or otherwise.

### **Definitions**

**Confidential information assets** – are defined in paragraph 5. below.

**OSA Contractor(s) or Contractor(s)** – any business, company, corporation, partnership, or individual conducting business on behalf of or in cooperation with the OSA, whether via contract, purchase order, or other purchasing agreement. OSA Contractors include Subcontractors and their employees.

**Protected information assets** - are defined in paragraph 4. below.

**State of Colorado information, information or audit information** – any information, whether in electronic or hard copy form, obtained, utilized, or generated by an OSA Contractor while performing work on behalf of the OSA.

### **State Auditor Authority and Responsibility**

The State Auditor’s authority and responsibility for accessing and handling confidential information is set forth in the Colorado Revised Statutes. Section 2-3-107(2)(a), C.R.S., provides that the State Auditor or his or her designated representative “shall have access at all times . . . to all of the books, accounts, reports, vouchers, or other records or information in any department, institution, or agency, including records or information required to be kept confidential or exempt from public disclosure upon subpoena, search warrant, discovery proceedings, or otherwise.” Additionally, Section 2-3-103(3), C.R.S., provides that “work papers of the office of the State Auditor shall be open to public inspection only upon approval of the majority of the members of the audit committee” and that “work papers that have not been specifically approved for disclosure by a majority vote of the committee shall remain confidential.” Finally, Sections 2-3-103.7 and 2-3-107(2)(b), C.R.S., prescribe penalties for willful or unlawful release of confidential information and prohibit the release of information required to be kept confidential pursuant to any law. The volume and availability of confidential information in electronic and hardcopy format, along with the risk to the OSA should confidential information be inadvertently released or breached, heightens the need for rigorous procedures governing the receipt, storage, and destruction of confidential data.

### **Policy Compliance**

1. All OSA Contractors and their personnel who are performing the Work are required to understand and abide by this policy.
2. By signing an OSA contract or purchase order, an OSA Contractor agrees to abide by this policy and require its personnel performing the Work, including Subcontractors and their employees, to understand and abide by this policy.

### **Data Classification**

3. Any State information asset whether in hardcopy or electronic form (e.g., data, databases, reports, communications, manuals, documentation for systems, procedures, and plans) that is used in the course

of an audit on behalf of the OSA is considered either “Protected” or “Confidential,” unless expressly stated otherwise in writing by the State Auditor.

4. “Protected information assets” are defined as information that: (i) is required by federal, state, or local laws and statutes to be protected; or (ii) would, in the event of a breach of confidentiality, loss of integrity, or lack of availability, seriously and adversely impact the OSA or the State, up to and including physical harm to individuals, or cause significant hardship to the OSA, the State, or commercial entities that have entrusted the information to the OSA.
5. All OSA Contractor audit information not categorized as “Protected” are automatically classified as “Confidential.”

### **Use and Protection of Information Assets**

6. Contractors must take reasonable and prudent measures to protect all OSA audit information and the systems that process, store, and transmit such information from unauthorized disclosure and modification regardless of where the OSA audit information and the systems are located.
7. All State information systems (e.g., networks, intranets, internet connections, telephones, fax, etc.) are the property of the State and are for State business use only. Contractor shall not use State information systems to knowingly access, store, or distribute offensive material, such as pornography. Contractors may not use State of Colorado systems to knowingly compromise other systems, networks or safeguards unless the OSA specifically authorizes them to do so in order to test the security of such systems, networks, or safeguards for legitimate State purposes.
8. Any unauthorized attempt to access information that is outside Contractor’s “need-to-know” for his/her operational purposes is prohibited.
9. Contractors must encrypt all “Protected” and “Confidential” information when stored on portable computers or removable media (e.g., laptops, external hard drives, CDs, USB drives.)
10. Contractors must, at all times, physically secure portable computers used in storing and processing audit information on behalf of the OSA through the use of cable locks or other security measures or, when physically securing a portable computer at a work site is not feasible, use encrypted devices or other security measures to ensure that theft of a portable computer does not result in the loss or disclosure of State Confidential Information or Work Product.
11. Contractors shall not leave any portable computers, removable media (e.g., laptops, external hard drives, CDs, USB drives), or hard copy information containing “Protected” and “Confidential” information unattended, such as in vehicles or in checked airport luggage.

### **Viruses and Malicious Code**

12. Contractors must effectively deploy personal firewall security and up-to-date malicious code/virus protection software for all systems and devices used in carrying out official OSA business.

### **Telecommunications Security and Information Transmission**



13. Contractors are responsible for being aware of and protecting against current and potential telecommunications (e.g., telephones, voice mail, mobile phones, conference calls, instant messaging, and facsimile machines) security risks in their given environment.
14. Contractors are prohibited from connecting to any state networks in connection with the Services hereunder without prior authorization from the OSA and the information security officer of the Audited Agency. In the case of executive branch agencies, Contractors should submit a request with their agency liaison to obtain permission through the Governor's Office of Information Technology access management team.
15. Contractors shall make every effort to ensure that all State of Colorado information is protected from inadvertent disclosure when being sent over the Internet or other non-State of Colorado networks.
16. Contractors shall not connect portable computers containing "Protected" or "Confidential" data to any public WiFi networks (e.g., internet cafes) without adequately protecting such information through the use of hard drive encryption and the use of an encrypted VPN tunnel.
17. Contractors must always consider information sensitivity and transmission security issues when selecting a transmission medium. "Protected" and "Confidential" data must only be transported or transmitted over a public network when protected by encryption.
18. When data is stored on electronic media or a mobile computing device, the data must be encrypted at all times during physical transport.
19. Transmission of Protected or Confidential data over a public network by unencrypted email is prohibited.

### **Information Storage and Disposal**

20. Media or hard copy documents containing Protected or Confidential information are to be appropriately labeled and protected in accordance with this **Exhibit E**.
21. Contractors must maintain physical media security by using locking filing cabinets or drawers and locking them when left unattended. Media security may also be achieved by locking the door of a private office.
22. Personal computers, laptops, USB drives, mobile phones, personal digital assistants (PDAs), and other devices and media containing State of Colorado information must be secured by their users from loss, theft, and unauthorized use.
23. Contractors shall not leave unattended any device containing State of Colorado information unless a password-engaged screensaver is used. The screen saver must engage after no more than 2 minutes of inactivity unless Contractor has a policy that requires its employees and its Subcontractors' employees to manually lock the device when leaving it unattended.
24. Contractors must ensure that once portable storage devices (e.g., external hard drives, CDs, USB drives) are no longer under their direct control, all Protected or Confidential data will be cleaned and sanitized (i.e., cleared, purged, and destroyed) in conformance with NIST Special Publication 800-88 and/or other standard procedures and requirements set by the U.S. Department of Defense, such as DoD 5220.22-M.

25. Hard copy documents containing Protected or Confidential information must be shredded prior to disposal.
26. Data storage devices (CDs, DVDs, and floppy disks) containing Protected data must be physically destroyed at the end of the audit. For thumb drives and portable hard drives, Contractor must either use an electronic shredding program to destroy the data or destroy the device at the end of the audit. A record of disposal is to be maintained in the workpapers by the Contractors. A record of disposal must contain the name of the individual disposing of the data, the method used to dispose of the data, identifying qualities of the data (such as the serial number of the media on which it was stored, if applicable), and the date of disposal.

### **Incident Reporting**

27. All suspected loss or compromise of OSA audit information as a result of the loss of a desktop, portable, or mobile computing device or removable storage device by any means (e.g., theft, loss) used to store State of Colorado data shall be reported to the OSA Contract Manager within 24 hours of discovery.
28. In the event of the suspected loss or compromise of OSA audit information under control of Contractor, Contractor is responsible for working with the State Auditor and the Audited Agency with respect to recovery and remediation. Contractor is also responsible for working with the OSA and the Audited Agency to notify all Colorado residents and other affected parties whose sensitive data may have been compromised as a result of the breach. Contractor will bear all reasonable associated costs.

### **Personnel Security**

29. Contractor is responsible for performing background checks consistent with Contractor's standard employment practices for Contractor personnel completing work on behalf of the OSA.

### **Policy Enforcement**

30. If Contractor is deemed to be in noncompliance of this policy by the State Auditor, the State Auditor shall have the unilateral right to terminate the Contract.
31. Upon request by the State Auditor, Contractor agrees that it shall make available qualified individuals and a member of senior management responsible for security and data protection, for the purposes of discussing information technology controls, including those policies, procedures, and controls relevant to the provision of services and security obligations under this Contract.

**28. EXHIBIT F - COMPENSATION AND PROCEDURES FOR BILLING**

1. Contractor shall submit all invoices for services to the State. Payment will be made from the State Auditor’s appropriation.
2. Contractor may render monthly interim bills to the State until completion of the Work, provided that the aggregate amount of all bills shall not exceed the maximum compensation set forth in §3 of this **Exhibit F**. The interim bills shall be promptly paid by the State except that the State reserves the right to withhold 10 percent of the total Contract amount until delivery and acceptance of the Audit Report. Release of the Audit Report by the Legislative Audit Committee constitutes acceptance of the Audit Report.
3. Total maximum compensation for the Work shall be \$**XX,XXX.XX**, with estimated funding split between State Fiscal Years expected to be:

	<u>Total</u>	<u>Paid From State’s Budget Period</u>	
		<u>20XX-20XX</u>	<u>20XX-20XX</u>
<b>Contractor</b>	<b>\$XX,XXX.XX</b>	<b>\$XX,XXX.XX</b>	<b>\$XX,XXX.XX</b>
Total Fee	<b>\$XX,XXX.XX</b>	<b>\$XX,XXX.XX</b>	<b>\$XX,XXX.XX</b>

## 29. EXHIBIT G - DEVELOPING AND PRESENTING PERFORMANCE AUDIT FINDINGS

### Title of Finding

Provide brief background information about the program in one or two paragraphs. Do not include criteria, condition, cause, or effect in this background section.

### What audit work was performed and what was the purpose?

Briefly describe the audit testwork that was performed using bullets and/or one to two paragraphs. (i.e., describe the data and documents reviewed, individuals interviewed, and the sample selected and sample methodology).

Describe the purpose of the audit work in one sentence. (i.e., “The purpose of the audit work was to XXXX.”)

### How were the results of the audit work measured? (*Criteria*)

The criteria are the standards against which the condition is measured. They are standards used by the auditors to evaluate a particular event or process and describe “what should be.” Some examples of criteria include:

- Colorado Constitution
- Colorado Revised Statutes
- Colorado state agency rules and regulations
- federal laws and regulations
- State Fiscal Rules and Fiscal Procedures Manual
- Generally Accepted Accounting Principles
- program-specific written policies and procedures
- program-specific written goals and objectives
- good business practices
- unwritten policies, procedures, goals, and objectives as explained by the Audited Agency’s personnel

If the criteria are not already set forth in writing, it may be necessary to find information to serve as evidence of criteria. When common sense or expert opinion is used as criteria, the development of the finding must be logical and convincing to the reader, who may not possess the same level of expertise. This is also important because such criteria are less authoritative than other types of criteria.

This section should briefly describe the criteria of the finding. Strive to provide the essential information in one or two short paragraphs, bullets, or in a table.

## **What problem did the audit work identify? (*Condition*)**

The first step in developing a finding is to identify the statement of condition. This occurs during the “fact-finding” process when the Contractor’s audit staff (“auditors”) compares “what is” with “what should be.” When there is a difference between “what is happening” with “what should be happening,” the first element (condition) of an audit finding is identified. The condition should be a factual statement of what was found and be free of value judgments.

This section should describe the overall problem (the condition of the finding) in one or two sentences. Then provide specific examples that support the condition (e.g., exceptions identified during the audit test work). Use bullets and tables to describe the types of exceptions identified.

## **Why did the problem occur? (*Cause*)**

The cause is the element of the audit finding which explains why the “condition” exists. The cause represents what must be corrected to prevent the recurrence of the existing condition. As such, auditors must correctly identify the cause before a proper course of action can be devised. Developing the cause frequently requires a fairly extensive analysis of the problem. Often, there are multiple factors causing the problem. The human behavior aspect, which increases the difficulty in identifying the proper cause, is always present. Nevertheless, auditors should make a reasonable effort to determine as closely as possible the real cause of the problem. Examples of cause include:

- negligence
- inadequate resources
- inadequate training
- poor communication
- inadequate guidelines or standards
- absence of good management techniques
- failure to follow established policies and procedures

This section should describe the cause of the finding in one or two paragraphs or in bullets that correspond to the bullets used in the condition section above.

## **Why does this problem matter? (*Effect*)**

The effect represents the end result of the activity being measured. It is the impact of the difference between the statement of condition and the criteria. The attention given to an audit finding depends largely upon its significance, and significance is judged by effect. What is the result if nothing is done about the problem identified? Auditors frequently use materiality to measure the potential significance of findings. The effect of an adverse audit finding is what motivates management to take needed action to correct the condition. When the effect is insignificant, audit staff should consider eliminating the finding from the report or grouping it with other minor findings. Some examples of effect include:

- violation of law or regulation
- noncompliance with legislative intent

- loss of potential income
- program goals and objectives not being met
- increased costs
- poor service quality
- inefficient service delivery
- increased risk of fraud and abuse
- reduced effectiveness

When determining the effect of an audit finding, auditors should look at outcomes such as impacts on citizens, services, or public safety. In addition, the fiscal impact of the finding (e.g., increase or decrease in revenue or costs) should be quantified where possible. The estimated fiscal impact should be discussed with the Audited Agency and reported as an estimate (e.g., we estimate this change will eliminate one administrative support position with an estimated annual cost of \$26,000).

This section should describe the effect of the finding in one or two paragraphs or bullets. Quantify the effect to the extent possible.

## **Recommendation No. X:**

The recommendation is the action believed necessary to correct the adverse situation. Generally, each finding will result in one or more recommendations. The following are guidelines for developing recommendations:

- Write recommendations that address or solve the “cause” of the problem.
- Write recommendations as realistically and specifically as possible so they are more likely to be understood by and prove useful to the Audited Agency.
- Present recommendations in a constructive tone and emphasize improvement rather than criticism of past activities. Auditors should keep in mind that their objective is to motivate the Audited Agency to take action. This can best be done by avoiding language that unnecessarily generates defensiveness and opposition.
- Write your recommendation so that it can be understood by itself (e.g., the reader will not have to refer to the finding to understand the recommendation).
- Avoid introducing new information in the recommendation that was not presented in the body of the finding. The recommendation should follow logically from what was presented in the finding.
- Avoid extreme language such as “immediately,” “without delay,” or “as soon as possible.” These phrases do not add to the substance of the recommendation. In situations where there is an urgency to correct a problem, include in the recommendation the consequence of delay (e.g., continued loss or waste of money).

The Department of XXXX should XXXX by:

- a.
- b.

The written Audit Report, which contains all audit findings and recommendations, is issued to legislators and other state and federal officials who have limited time to read reports. Therefore, the Contractor should present findings as concisely as possible, but with enough clarity to be understood by the reader. In addition to being clear and concise, audit findings should be logical, convincing, and constructive. The findings should be presented in a way that will convince the reader of their significance and motivate the Audited Agency to take action. This is accomplished by clearly presenting the five elements of an audit finding—condition, criteria, effect, cause, and recommendation.

For additional guidance regarding developing findings, please consult *Government Auditing Standards* issued by the U.S. Comptroller General, which is available online at <http://www.gao.gov/>.

### **30. EXHIBIT H - REPORTING REQUIREMENTS AND FORMAT FOR SEPARATELY ISSUED REPORTS**

The final Audit Report contains findings, conclusions, and recommendations resulting from the Work. It also provides recommendations for changes or modifications to improve the efficiency and effectiveness of the Audited Agency.

Contractor shall prepare the final Audit Report in the format delineated below.

#### **REQUIRED REPORTING FORMAT**

1. Addressee of Report

Each Audit Report should be addressed to “Members of the Legislative Audit Committee.”

2. Report Format

Contractor’s Audit Report will include all of the following sections bound together as a single report and shall be prepared using the OSA format to the extent possible. Contractor may consult the OSA’s website for examples of recently issued performance audit reports. Acceptable binding formats are limited to spiral, comb, or glued bindings; 3-ring bindings are not acceptable.

Major sections of the Audit Report and their required order within the report are:

Report Cover  
LAC, Staff, and Distribution Page  
Report Transmittal Letter  
Table of Contents  
Report Highlights  
Overview or Background Chapter  
Findings Chapter(s), Including the Audited Agency’s Responses

a. Report Cover

The report cover should contain the title and date of the Audit Report, including the name of the Contractor conducting the audit.

b. LAC, Staff, and Distribution Page

The reverse side of the report cover should contain a listing of the current members of the Legislative Audit Committee, OSA staff, and Contractor staff conducting the audit. This page also contains information on how to obtain both electronic and bound versions of the report. The distribution information should include the Audit Report number. A template will be provided by the OSA.

c. Report Transmittal Letter

A letter to the Legislative Audit Committee signifying transmission of the Audit Report and signed by the Contractor.

d. Table of Contents



This page is an index to the report denoting the major report sections and corresponding page numbers.

e. Report Highlights

The highlight sheet is a one-page summary of the report's key conclusions, facts and findings, and recommendations. A template will be provided by the OSA.

g. Overview or Background Chapter

A section of the Audit Report, typically presented as a separate chapter, intended to familiarize the reader with the Audited Agency, including its statutory authority and purpose, key functions, organization, descriptive financial and non-financial statistics, etc. This section also includes a general description of the audit's purpose, scope, and methodology. This section does not contain the specific background information necessary to establish the audit's findings, conclusions, and recommendations.

h. Findings Chapter(s), Including the Audited Agency's Responses

The Audit Report must contain this section, typically presented as a separate chapter or chapters, reporting the auditor's conclusions, findings, and recommendations relative to the audit's scope and objectives. See **Exhibit G** for more guidance on developing and presenting performance audit findings.

The findings and recommendations included in the report should contain sufficient background to inform a lay reader of the facts and circumstances surrounding the finding. In addition, the finding should identify and emphasize the business effects resulting from the deficiency or instance of non-compliance. Audit recommendations, which focus on workable solutions the Audited Agency can effectively implement, are presented after each audit finding. The recommendations are consecutively numbered and may contain one or more subparts (e.g., 1, 2, 3a, 3b, 3c, 4a, 4b, etc.).

The Audited Agency's formal written response to any audit recommendations are included in the body of the Audit Report following each recommendation. The OSA will provide Contractor with the standard form for obtaining the Audited Agency's responses. The Contractor is responsible for working with the OSA to review the Audited Agency's responses for accuracy, responsiveness to the recommendations, and adherence to the OSA's established parameters. The Audited Agency's responses must be reviewed and approved by the OSA prior to their inclusion in the Audit Report. Any "Partially Agree" or "Disagree" responses must include an Auditor's Addendum, which is a rebuttal to the Audited Agency's response. The language for all Auditor's Addenda must be reviewed and approved by the OSA prior to their inclusion in the Audit Report.