

PURCHASE AGREEMENT
UNDER CMAS CONTRACT PRICING AND PROVISIONS

This Purchase Agreement ("Agreement"), under the State of California Multiple Award Schedule Contract No. 4-01-56-0006-A, is entered on March 17, 2021, by and between the Tahoe Truckee Unified School District ("District") and The Garland Company, Inc. ("Vendor") as follows:

RECITALS

WHEREAS, the District wishes to purchase roofing materials and warranty ("Roofing Materials") for Kings Beach Elementary School, to be installed under a separate contract by August 15, 2021.

WHEREAS, the District wishes to avail itself of the benefits and protections of the State of California Multiple Award Schedule program ("CMAS").

WHEREAS, Vendor wishes to contract to provide the District with the Roofing Materials that it needs and is willing to provide them pursuant to CMAS program requirements and in accordance with any other additional terms negotiated between the District and Vendor.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the parties have agreed and do agree as follows:

TERMS AND CONDITIONS

1. **CMAS Contract.**
 - 1.1. This Agreement fully incorporates by this reference CMAS Contract No. 4-01-56-0006-A ("CMAS Contract"), attached hereto as **Exhibit "A"** and all of its amendments, forms, riders, and CMAS program terms and conditions.
 - 1.2. To the extent any term or condition of this Agreement is inconsistent with the CMAS Contract, the CMAS Contract shall control, except for the price, delivery, payment provisions, venue and jurisdiction, and insurance provisions in this Agreement, which shall control over all other contradictory provisions in the CMAS Contract.
2. **Products and Price.** Vendor agrees to sell, supply, and deliver, and District agrees to purchase the Roofing Materials under the CMAS Contract at the reduced negotiated prices ("Quoted Price"), as set forth on the attached **Exhibit "B"**. Vendor acknowledges and certifies that the Quoted Prices are equal to or less than the prices as accepted by the State of California Department of General Services for the identical items under the CMAS Contract.
3. **Payment and Delivery.**
 - 3.1. District shall pay Vendor for the Roofing Materials within forty-five (45) days of (i) date of delivery by Vendor and date of acceptance of the Roofing Materials by District, or (ii) receipt of an undisputed invoice, whichever is later.

3.2. Vendor shall deliver the Roofing Materials in accordance with District's instructions. Shipping is included in the Quoted Price.

4. Compensation.

The roofing materials and warranty pricing is identified in **Exhibit "B,"** which is attached hereto and incorporated herein by reference. The not-to-exceed compensation shall be **Four Hundred Ninety-Seven Thousand Six Hundred Four 51/100 Dollars (\$497,604.51).**

5. Reserved.

6. Insurance.

6.1. Vendor shall procure and maintain at all times it performs any portion of the services under the Agreement the following insurance with minimum limits equal to the amount indicated below.

TYPE OF COVERAGE	MINIMUM REQUIREMENT
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 2,000,000 \$ 4,000,000
Automobile Liability Insurance - Any Auto Each Occurrence	\$ 2,000,000
Workers' Compensation	Statutory Limits
Employer's Liability	\$ 3,000,000

- **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Vendor, the District, its Governing Board, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from performing any portion of the services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)
- **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the services under the Agreement. In accordance with provisions of section 3700 of the California Labor Code, the Vendor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the services.

- 6.2. Proof of Insurance. The Vendor shall not commence performing any portion of the services under the Agreement until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- (a) A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - (b) Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - (c) An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. An endorsement shall also state that Vendor's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.
 - (d) All policies except the Workers' Compensation Insurance and Employers' Liability Insurance Policies shall be written on an occurrence form.
- 6.3. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
7. Licenses. Vendor and all of its employees, agents, and contractors shall secure and maintain in force, at Vendor's sole cost and expense, all licenses, registration and permits as are required by law, in connection with the furnishing of products, materials, supplies, or services herein listed.
8. Claims. In the event of any demand by Vendor's contractor for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Agreement, (B) payment by the District of money or damages arising from work done by, or on behalf of, Vendor's contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or to which Vendor's contractor is not otherwise entitled, or (C) an amount of payment disputed by the District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Vendor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code as a condition precedent to Vendor's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Vendor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the

dispute, Vendor's contractor and its subcontractors shall continue to perform the Work under the Contract and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District. Statutory language from Public Contract Code sections 9204, and 20104 through 20104.6, is attached at **Attachment "1"** and incorporated herein by this reference.

9. Other Terms of Agreement.

- 9.1. For the purposes of this Agreement, all references to the "State of California," "State," and/or "Local Agency" in the CMAS Contract(s) shall be interpreted to apply to the District and all rights, duties and obligations with respect to the "State of California," "State," and/or "Local Agency" under the CMAS Contract shall apply to the District under this Agreement.
- 9.2. The Parties acknowledge that each of them has fully discussed the contents of this Agreement with their chosen representatives and/or legal counsel and has had the benefit of legal counsel in negotiating and drafting the terms of this Agreement. Accordingly, this Agreement shall not be construed as having been drafted by one party or the other.
- 9.3. This Agreement, the attachments hereto and the documents specifically incorporated into the Agreement by reference constitute the entire agreement between the Parties. No other promises, agreements, or statements between the parties shall be binding unless made in writing and signed by both Parties.
- 9.4. Each party shall bear its own costs and attorneys' fees incurred in relation to the drafting and negotiation of this Agreement and any proceedings connected to, arising or resulting from this Agreement.
- 9.5. This Agreement and the rights and obligations of the parties shall be construed and interpreted in accordance with the laws of the State of California. Any action or proceeding to enforce this agreement shall be commenced and maintained in the county in which the District's administrative offices are located.
- 9.6. The Parties agree to execute all such other documents and to take all such other actions as may be reasonably necessary to effect and carry out the purposes of this Agreement.
- 9.7. This Agreement may be executed in several counterparts and shall be deemed legally effective at such time as the counterparts duly executed on behalf of all parties have been furnished and assembled. Signature of copies and facsimile or electronic versions of this Agreement shall have the same force and effect as signature of the original.
- 9.8. All notices to be given under this Agreement shall be in writing to the address of the appropriate party as set forth below or as provided by written notice to the other party.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

District:

Tahoe Truckee Unified School District
11603 Donner Pass Road
Truckee, CA 96161

Vendor:

The Garland Company, Inc.
Attn: Chuck Ripepi
3800 E. 91st Street
Cleveland, OH 44105

Date: _____, 2021

Date: _____, 2021

SIGNATURE

SIGNATURE

Mrs. Carmen Ghysels
NAME

PRINT NAME

Superintendent /Chief Learning Officer
TITLE

PRINT TITLE

Attachment "1"**Public Contract Code section 9204**

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed

meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted

statute, that is enacted before January 1, 2020, deletes or extends that date.

Public Contract Code sections 20104 – 20104.6

§ 20104.

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2.

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

END OF DOCUMENT

Exhibit "A"

(See Attached CMAS Contract 4-01-56-0006A)

**Exhibit "A" – CMAS Contract
4-01-56-0006A – Garland**



Department of General Services
 Procurement Division
 P.O. Box 942804
 Sacramento, CA 94204-0001

State of California
MULTIPLE AWARD SCHEDULE
The Garland Company, Inc.

4-01-56-0006A - Construction-Roofing Material
 Construction-Flooring-Epoxy

CONTRACT NUMBER: 4-01-56-0006A
 CMAS TERM DATES: 10/22/2001 through 4/30/2005
 DISTRIBUTION: STATEWIDE

CMAS Schedule A – Based on GSA #GS-07F-0130K (THE GARLAND COMPANY, INC.)

This contract is available for use by State of California agencies and any city, county, city and county, district or other local governmental body or corporation empowered to expend public funds. While the state makes this contract available, each local agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

CMAS Contractors are required to provide all CMAS and Federal contract terms and conditions with the list(s) of products, services, and prices. These terms and conditions may include guarantees and other important provisions not included on the contract cover page. PLEASE REQUEST FROM CONTRACTOR A COPY OF ALL CONTRACT TERMS AND CONDITIONS IF NOT PROVIDED INITIALLY.

State Law (Labor Code Section 6360 et seq.) requires employers' to have information regarding hazardous or potentially hazardous substances in the workplace on file or readily available to them. In order to assist employers to comply with this requirement the Department of Industrial Relations has compiled a list of hazardous substances.

Some or all of the products listed on this CMAS contract appears on the Hazardous Substances List. CMAS supplier must provide Material Safety Data Sheet (MSDS) for these products when they are delivered to California Public Agencies. A Material Safety Data Sheet is supplied by the manufacturer of a substance and lists the manufacturer's name and address, the name, chemical and physical properties of the material, and the potential hazards, safeguards and procedures to follow in case of accident or overexposure.

NOTICE FOR RECYCLED PAINT PURCHASES

Public Contract Code section 12205 requires that all state agencies purchase recycled paint. Currently 50% of paint purchases are required to be recycled paint. Recycled paint can also be obtained from State of California, Department of General Services, Procurement Division, Contract #1-00-80-10. Please contact Jim Byers at (916) 323-4250 for further information.

HIROKO KUROSAWA Effective Date: **10/22/2001**
 HIROKO KUROSAWA, Program Analyst, California Multiple Award Schedules Unit

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A**

CMAS CONTRACT BASE

This CMAS contract is based on GSA #GS-07F-0130K (The Garland Company, Inc.) with a GSA term of 1/20/2000 through 1/19/2005.

CMAS CONTRACT TERMS AND CONDITIONS

The attached CMAS contract terms and conditions dated February 2001 are incorporated into this contract.

PURCHASE ORDERS

All individual purchase orders issued against this CMAS contract incorporate these ordering provisions as well as all terms and conditions.

The supplier must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

ISSUANCE OF PURCHASE ORDER

Purchase orders must be issued before the expiration of the CMAS contract. Performance (delivery of product and/or services) of the purchase order may be performed and completed after the expiration of the CMAS contract but must be performed within the delivery date(s) requirement(s) as stated on the purchase order.

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions appearing in the Special Items or other provisions of the Federal GSA which are intended to apply to the purchase, license, or rental (as applicable) of the products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The California Multiple Award Schedule terms and conditions shall prevail if there is a conflict between the terms and conditions of the Contractor's federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

PRODUCT INSTALLATION

Product installation is not allowed unless specifically provided for in the CMAS contract. If provided for, the CMAS Contractor is fully responsible for all installation services performed under the CMAS contract. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications, unless otherwise specifically stated in the agency's purchase order/Statement of Work (SOW).

THIS CONTRACT PROVIDES

This contract provides for the purchase and warranty of roofing and flooring materials.

LEASING:

Except as stated below, Federal GSA Lease provisions are NOT acceptable, and cannot be sold through CMAS because the rates and contract terms are unacceptable, and not applicable to the state.

SEAT Management financing options are NOT available through this contract.

Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term are acceptable (\$1 residual value is acceptable).

As an alternative, agencies may consider financing through the state's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd then click on GS \$Mart™. Buyers without Internet access may contact the GS \$Mart™ Administrator, Pat Mullen by phone at 916/327-2600 or via e-mail at pat.mullen@dgs.ca.gov for further information.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A**

SMALL BUSINESS ORDERING CONSIDERATION

Effective January 1, 1999, pursuant to Assembly Bill No. 2405, prior to placing orders under the California Multiple Award Schedule program, state agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: Substantiation of compliance with this requirement will be requested by the Department of General Services auditors when your files are reviewed.

The following website lists CMAS Small Business Partners:

www.pd.dgs.ca.gov
(click on CMAS; go to Small Business Partners)

ACCEPTANCE TESTING CRITERIA

Acceptance testing may be required as specified in the purchase order for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period.

ORDER FORM

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

The State Standard Forms can be found electronically at the Office of State Publishing web site:
<http://www.dgs.ca.gov/osp> (select Standard Forms). The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65:
<http://www.osp.dgs.ca.gov/pdf/std065.pdf>

The Procurement Division will bill each state and local agency for use of CMAS contracts, equal to 1.21% of the value of each order. The Procurement Division will bill state and local agencies directly. The 1.21% fee should NOT be included in the order total, or remitted before a bill is received from us.

One copy of each order shall be forwarded to the Department of General Services (DGS), Procurement Division, CMAS Unit, 1500 - 5th Street, Suite 116, Sacramento, CA 95814, Attention: Carol Unifleet (IMS# C-39).

Updated 9/4/01

ORDERING PROCEDURES

The ordering entity is required to complete and distribute the order form. For services, the ordering entity shall modify the information contained on the form to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included on the order, not just system totals.

CONTRACT PRICING

Contract prices for products and/or services are maximums. The ordering agency is encouraged to negotiate lower prices.

STATE POLICY

USE OF CMAS IS OPTIONAL. AGENCIES ARE STRONGLY ENCOURAGED TO OPTIMIZE THE BENEFITS OF THE CMAS PROGRAM BY COMPARING DIFFERENT SCHEDULES FOR VARYING PRODUCTS, SERVICES AND PRICES, AND CAREFULLY REVIEWING ALL CONTRACT TERMS AND CONDITIONS, TO OBTAIN THE BEST VALUE AVAILABLE.

THE CALIFORNIA MULTIPLE AWARD SCHEDULE DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTS OR PROCUREMENTS OF GOODS OR SERVICES. Special attention should be given to the Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62, the Productive Use Requirements of SAM Section 5203.

Agencies should be aware that approval from the Department of Information Technology (DOIT) is required for:

- procurement of major Information Technology systems pursuant to SAM Section 4819.39;
- purchase of imaging equipment which exceed \$25,000; and
- purchase of used Information Technology equipment.

Special attention is to be given to the following:

- SAM Section 4819.41 and 4832 certifications for Information Technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies must adhere to the guidelines in SAM Section 2120/2121 for servicing office equipment.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A**

- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including amendments which exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 state agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the CMAS contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.

YEAR 2000 COMPLIANCE

Contract language pertaining to Year 2000 Compliance is addressed in the attached CMAS Terms and Conditions.

INTEGRATED SERVICES

Integrated services are not allowed unless specifically provided for in the CMAS contract. If provided for, the contractor is fully responsible for all integrated services performed under the CMAS contract.

We encourage agencies to obtain from the contractor a customer reference prior to issuance of the purchase order to substantiate that the contractor has successfully completed at least one comparable integrated services project.

PUBLIC WORKS PROJECTS

A public works contract is defined as an agreement for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" in accordance with the Public Contract Code (PCC) Section 1101. State agencies planning these types of projects need to review the State Contracting Manual (SCM) Section 10 for applicable guidelines and regulations.

Agency CMAS orders may allow for a public works component only when it is incidental to the overall project requirements. Agencies are to ensure that the applicable laws and codes pertaining to the Contractor and sub-Contractor licensing, prevailing wage rates, bonding, labor code requirements, etc. are adhered to by the prime Contractor as well as any sub-Contractor during the performance under the agency's CMAS order.

The bond amount for public works has increased to a sum not less than one hundred percent (100%) of the purchase order price.

Note: In accordance with Labor Code Section 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency's office, and will be made available upon request. The prevailing wage rates are available from the DIR at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774.

LEASE/PURCHASE ANALYSIS

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). The LPA is not required to be approved by the Department of General Services.

PRICE ANALYSIS

CMAS contracts are considered "price analyzed" because they are based upon federal government multiple award schedules on which a price/cost analysis was already performed, or upon other multiple award schedules where the products have been competitively bid, price compared and are presumed fair and reasonable. Therefore, additional analysis is not required by the individual ordering agencies.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
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FEDERAL DEBARMENT

When federal funds are being expended, the ordering agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the Contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

ORDER LIMITS

The maximum amount of each transaction placed under the award contract is \$100,000.00.

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

The minimum dollar value of an order to be issued under this contract is \$100.00.

MULTIPLE CONTRACTS ON STD. 65 ORDER FORM

Agencies may include multiple contracts from the same supplier on a single Std. 65 Contract/Delegation Purchase Order. Agencies wishing to create a single purchase order using multiple CMAS contract numbers must adhere to the following guidelines, without exception.

1. All contracts must be for the same CMAS supplier.
2. The order must go to one supplier location.
3. Place the word "CMAS" in the space usually reserved for the contract number. On Std. 65s, this is at the top of the form. The word "CMAS" signifies that the order contains items from multiple CMAS contracts.

4. The purchasing agency may only use one (1) bill code.
5. For each individual contract (as differentiated by alpha suffix), the agency must identify and group together the contract number with line items and subtotal per contract number (do not include tax in the subtotal), AND sequentially identify each individual contract as Sub #1, Sub #2, Sub #3, etc. This facilitates accurate billing by the Procurement Division.
6. The total of all items on the purchase order must not exceed the order limit identified in the CMAS contract.
7. Do not combine items from both commodity and information technology contracts. Commodity contracts begin with the number 4 and information technology contracts begin with the number 3. The order limits are different for these types of contracts.

MAINTENANCE TAX

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has the option of entering into contracts which provide for only maintenance services (i.e. the furnishing of labor and parts necessary to maintain equipment) or contracts which provide for both maintenance services and consumable supply items (i.e. toner, developer, and staples, for example).

When the State has the first choice available above, the charges for the provision of maintenance services are not taxable. However, when both maintenance services and consumable supplies are provided (second choice above), the provision of the consumable supplies is considered a taxable sale of tangible personal property.

Therefore, State agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

The contractor will be required to itemize the consumables being taxed for state accounting purposes.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
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OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

Contractors must be authorized providers of the hardware/software or services they offer under the Not Specifically Priced (NSP) Items provision; or, otherwise, risk contract termination.

CMAS Contractor has the option of accepting orders for non-contract products and services (NSP items), subject to the following requirements. Agency orders containing only NSP items are prohibited. To be included on an order issued under this contract, NSP items must adhere to the following provisions and limitation.

1. The Contractor agrees to specifically monitor all schedule orders received to ensure adherence to this provision.
2. A schedule order containing NSP items may be issued only if such an order results in the lowest overall alternative to meet the needs of the Government. *
3. NSP items shall be clearly identified in the schedule order. Any product or service already specifically priced and included in the schedule contract may not be identified as a NSP item.
4. Maximum Order Limitation: For orders \$250,000.00, or less, the total dollar value of all NSP items included in a schedule order shall not exceed \$5,000.00. For orders exceeding \$250,000.00, and at the option of the supplier, the total dollar value of all NSP items in a schedule order shall not exceed 5% of the total cost of the order, or \$25,000.00 whichever is lower. This includes orders with approved "exception" limits.

5. An NSP item included in an order issued against a schedule contract is subject to all of the terms and conditions set forth in the schedule contract.

6. The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this contract:

- a) Items which are not intended for use in directly supporting the priced items included in the same order. An item must be subordinate to the specifically-priced item that the NSP item is supporting.

For example, a cable, which is not otherwise specifically priced in the contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.

- b) Supply type items, except for the minimum amount necessary to provide initial support to the priced schedule items included in the same order.
- c) Trade-ins, Upgrades, involving the swapping of boards, are permissible, where the schedule contract makes specific provisions for this action. In those instances where it is permitted, the schedule order must include the replacement item and an order notation that the purchase involves the swapping of a board.
- d) Items which do not meet the Productive Use Requirements.
- e) Any other item or class of items which is specifically excluded from the scope of this schedule contract.
- f) Public Works components which are NOT incidental to the overall project requirements, CMAS Terms and Conditions, General Provision #52.

Updated 9/4/01

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**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
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- g) Products or services the supplier is NOT factory authorized or otherwise certified or trained to provide.
- h) Follow-on consultant services that were previously recommended or suggested by the same supplier for information technology projects. Refer to the CMAS Information Technology, General Terms and Conditions, Provision #6.

Category 2 - All Information Technology Equipment and Non-Critical Software: Information technology equipment is defined in SAM Section 4819.2.

<u>Cost</u>	<u>Prior Operation</u>
More than \$100,000	6 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	1 month

The Contractor will not accept any order under the contract containing NSP items which does not conform to these terms. The Contractor will promptly notify the Customer agency issuing the non-conforming order of its non acceptance and the reasons for its non acceptance.

CREDIT CARD

The Garland Company, Inc. accepts the State of California credit card (CAL-Card).

Agencies are NOT required to submit support documentation to CMAS for CAL-Card transactions, and the CMAS Unit will not bill agencies for CAL-Card transactions.

PRODUCTIVE USE REQUIREMENTS

Each equipment or software component must be in current operation for a paying customer and the paying customer must be external to the Contractor's organization (not owned by the Contractor and not owning the Contractor).

CONTRACTOR TRAVEL

State agencies (not local governments) should refer to SAM Section 0774 "TRAVEL AND RELATED REIMBURSEMENT OF PERSONS NOT STATE EMPLOYEES," when transportation and per diem costs are to be reimbursed by the state.

To substantiate compliance with the Productive Use Requirements, the Contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

If the contract provides for travel, state agencies may pay travel and per diem expenses according to state travel time and per diem rules (represented employee rates) and verified receipts. Local government, education and special districts will pay travel time and per diem according to their statutory requirements. All travel and per diem expenses must be within contract parameters, and incorporated into the agency's order.

The elapsed time such equipment or software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for equipment or software operation prior to approval of the replacement item on CMAS.

Notwithstanding the contract provisions, the state will not be responsible for the cost of travel to bring contractor personnel from out of state. However, if requested by the ordering agency, the state will be responsible for the cost of travel from one California agency site to another.

Category 1 - Critical Software: Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

If travel is NOT addressed or is not covered in the contract, then the agency cannot include it as a line item on the order.

<u>Cost</u>	<u>Prior Operation</u>
More than \$100,000	8 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	1 month

It is important that the agency and contractor discuss necessary travel requirements prior to issuing the purchase order because the detail and cost (only as allowed for in the contract) must be included in the agency purchase order to be payable.

Updated 9/4/01

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
 THE GARLAND COMPANY, INC.
 CMAS NO. 4-01-56-0006A

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Origin.

State agencies (not local governments) must follow the instructions below for shipping charges exceeding \$50.00.

All shipments will be made by ground transportation unless otherwise ordered on the Std. 65.

Before placing order, contact the DGS Transportation Management 916/928-5842 to determine the routing of freight shipments. You will need to provide Transportation Management with the point of origin and destination. They will also want to know the commodity being shipped and the estimated shipping weight of the order. If shipping overnight, the account number must be included.

Routing information should be shown on the face of the Contract/Delegation Purchase Order (Std. 65) in the format shown below.

Shipping Instructions:
 Supplier route via _____
 Carrier's telephone number _____
 Annotate bill(s) of lading as follows:
 "Freight for account of State of California. Tender Number _____ applies. State of California Purchase Order Number _____ SHIP FREIGHT COLLECT."
 Estimated Freight charges: _____

If supplier is unable to use this carrier, call Transportation Management at 916/928-5842.

The following statement must be noted on the purchase order when the commodities are being shipped via UPS (United Parcel Service) and the state is paying directly to UPS (Collect).

Shipping Instructions:
 Supplier route via United Parcel Service (surface).
 State of California, Department of _____
 UPS account number applies.
 State of California Purchase Order Number _____
 SHIP COLLECT.
 Estimated UPS charges: _____

If supplier is unable to use UPS, call Transportation Management at 916/928-5842.

Contractor note: Additional shipping costs incurred by deviation to above shipping instructions, without Traffic Management approval shall be charged to the Contractor.

PAYMENT TERMS

1.5%-10 days, Net 45 days.

Each state accounting office must have a copy of the attached Vendor Data Record (Std. 204) in order to process payment of invoices. Agencies should forward a copy of the Std. 204 to their respective accounting office(s). Without the Std. 204, payment may be unnecessarily delayed.

DELIVERY

30 days after receipt of order, or as negotiated between agency and Contractor.

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions 19, CMAS Warranty.

OWNERSHIP INFORMATION

The Garland Company, Inc. is a large business enterprise.

CONTRACT DISTRIBUTION AND UPDATES

Contractors will provide to agencies a copy of their catalog(s) or listing(s), contract terms and conditions, and all updates upon request.

SUPPLIER QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 1500 - 5th Street, Suite 116, Sacramento, CA 95814, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Suppliers with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete.

New schedules for contractors with existing schedules, and extensions or renewals of existing schedules, will be approved ONLY if the contractor has submitted to the CMAS Unit all quarterly reports due. (Copies of only purchase orders are no longer acceptable). Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.



State of California • Department of General Services • Gray Davis, Governor

PROCUREMENT DIVISION

1823 14th Street, Room 100 • Sacramento, California 95814 • (916) 445-2500

October 22, 2001

Mr. Karl W. Sooy
The Garland Company, Inc.
3800 East 91st Street
Cleveland, OH 44105

Subject: The Garland Company, Inc. California Multiple Award Schedule (CMAS)

CMAS #4-01-56-0006A - Contract Term: October 22, 2001 through April 30, 2001
GSA #GS-07F-0130K - Construction-Roofing Material
Construction-Flooring-Epoxy

The state is pleased to accept your offer to establish a California Multiple Award Schedule (CMAS), which we have assigned the above CMAS contract number. This number must be shown on each invoice rendered.

Agencies may procure their products and/or services from your CMAS during the term of this agreement. We have included an electronic mailing list of state and local government contacts for your convenience. This acceptance letter, the attached CMAS contract including ordering instructions as well as terms and conditions, and your award schedule catalog(s) or listing(s) shall be considered part of the agreement.

It is the responsibility of your firm to furnish, upon request, copies of this CMAS package to state and local agencies. A complete CMAS contract includes copies of the following:
1) CMAS cover sheets (signature page, ordering instructions as prepared by the CMAS Unit, Std. 204 Payee Data Record), 2) CMAS contract terms and conditions, 3) Federal terms and conditions, and 4) product/service listing and prices. The CMAS Unit strongly recommends to all government agencies that they place orders with suppliers who provide ALL of the contract elements described above.

Contractors are required to submit a detailed report on a quarterly basis (refer to CMAS Terms and Conditions, General Provision, Paragraph 59) to the DGS Procurement Division, CMAS Unit, 1500 - 5th Street, Suite 116, Sacramento, CA 95814, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix and shall include the activity of the contractor's respective authorized CMAS resellers when applicable. This report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

If your firm has an electronic Bulletin Board System (BBS) available to state departments for on-line inquiry of current catalog or listing updates, or your catalog(s) or listing(s) are available on CD ROM, please inform our agencies of how they may avail themselves of these options.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 of 18
2. AMENDMENT/MODIFICATION NO. MO08	3. EFFECTIVE DATE SEE BLOCK 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY CODE GSA/FSS, General Products Acquisition Center Law Enforcement, Security, and Industrial Products Acquisition Division 819 Taylor Street, Room 6A24 (7FCI-C6) Fort Worth, TX 76102-6114		7. ADMINISTERED BY (If other than Item 6) CODE 72A and IFF Remittance is delegated to: GSA/FSS, Contract Management Division (5FX)		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) The Garland Co., Inc. Attn: Karl Sooy 3800 E. 91st St. Cleveland, OH 44105-2103		<input checked="" type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO.	
CODE		10. MODIFICATION OF CONTRACT/ ORDER NO. GS-07F-0130K		10B. DATED (SEE ITEM 13) 1/20/00 - 1/19/05
FACILITY CODE		11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS		
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.				
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning ____ copies of the amendment; (b) By acknowledging the receipt of the amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required)		N/A		
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.			
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)			
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:			
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) Clause 552.243-72, Modifications (Multiple Award Schedule)			
E. IMPORTANT: Contractor is not required <input checked="" type="checkbox"/> to sign this document and do not return any copies to this issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)				
The above numbered contract, awarded under Schedule 056, Federal Supply Group 56, Titled Buildings and Building Materials/Industrial Services and Supplies, is modified as shown on pages 2 through 18.				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
		GEORGIA D. SELLS CONTRACTING OFFICER		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED	
(Signature of person authorized to sign)		<i>Georgia D. Sells</i>	January 26, 2004	
		(Signature of Contracting Officer)		
NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE		30-105	STANDARD FORM 30 (REV. 10-83) PRESCRIBED BY GSA FAR (48 CFR) 53.243	

A. Effective with this modification, delete and replace contract clauses as shown below. Prior fill-ins and certifications are incorporated and remain in full force and effect. Full texts of all clauses are provided below.

1. Delete The Following Clauses:

- 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)
- 52.212-1, Instructions to Offerors-Commercial Items (Jul 2003)
- 52.212-4, Contract Terms and Conditions-Commercial Items (Feb 2002)
- 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (June 2003)
- 52.225-5, Trade Agreements (June 2003)
- 552.212-72, Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable To GSA Acquisition of Commercial Items (Jul 2003)
- 552.232-77, Payment By Government Commercial Purchase Card (Mar 2000) (Alternate I—Mar 2000)

2. Add the following Clauses:

- 52.212-1, Instructions to Offerors-Commercial Items (Oct 2003)
- 52.212-4, Contract Terms and Conditions-Commercial Items (Oct 2003)
- 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (Oct 2003)
- 52.223-5, Pollution Prevention and Right-To-Know Information (Aug 2003) (Alternate I – Aug 2003)
- 52.225-5, Trade Agreements (Oct 2003)
- 552.212-72, Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable To GSA Acquisition of Commercial Items (Sept 2003)
- 552.232-77, Payment By Governmentwide Commercial Purchase Card (Mar 2000) (Alternate I—Mar 2000)

B. The following clause changes apply to only those contracts awarded after November 18, 2003:

1. Delete the following clauses:

- 52.225-13, Restrictions on Certain Foreign Purchases (June 2003)
- 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (May 1999)
- C-FSS-370, Contractor Tasks/Special Requirements (Nov 2001)
- I-FSS-598, Central Contractor Registration (CCR) (Jul 2002)

2. Add the following clauses:

- 52.204-7, Central Contractor Registration (Oct 2003) (Alternate I – Oct 2003)
- 52.225-13, Restrictions on Certain Foreign Purchases (Oct 2003)
- 52.232-33, Payment by Electronic Funds Transfer- -Central Contractor Registration (Oct 2003) (referenced under 52.212-5)
- C-FSS-370, Contractor Tasks/Special Requirements (Nov 2003)

52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003) (ALTERNATE 1 – OCT 2003)

(a) Definitions. As used in this clause—

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

Data Universal Numbering System+4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

Registered in the CCR database means that—

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
 - (2) The Government has validated all mandatory data fields and has marked the record "Active".
- (b) (1) The Contractor shall be registered in the CCR database by December 31, 2003. The Contractor shall maintain registration during performance and through final payment of this contract.
- (2) The Contractor shall enter, in the block with its name and address on the cover page of the SF 30, Amendment of solicitation/Modification of Contract, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the Contractor's name and address exactly as stated in this contract. The DUNS number will be used by the Contracting Officer to verify that the Contractor is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
- (1) An offeror may obtain a DUNS number—
 - (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
 - (2) The offeror should be prepared to provide the following information:
 - (i) Company legal business.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company Physical Street Address, City, State and Zip Code.
 - (iv) Company Mailing Address, City, State and Zip Code (if separate from physical).
 - (v) Company Telephone Number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).

- (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.
- (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.
- (2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
- (h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

- (a) Definitions. As used in this clause—

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.

- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
- (1) The emergency planning reporting requirements of section 302 of EPCRA.
 - (2) The emergency notice requirements of section 304 of EPCRA.
 - (3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

- (4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.
- (5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.
- (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.

52.225-5 TRADE AGREEMENTS (OCT 2003)

- (a) Definitions. As used in this clause.

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

Caribbean Basin country end product—

Means an article that—

- (i) (A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and
- (g) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).
 - (A) For this reason, the following articles are not Caribbean Basin country end products:
 - Tuna, prepared or preserved in any manner in airtight containers;
 - Petroleum, or any product derived from petroleum;
 - Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and
 - Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;
 - (B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.customs.usitc.gov/impexpo/impexpo.htm>. In particular, see the following:
 - General Note 3(c), Products Eligible for Special Tariff treatment.
 - General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.
 - Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
 - Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act; and

Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Designated country means any of the following countries:

Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea, Republic of Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country end product means an article that—

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country end product means an article that—

- (1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

- (b) *Implementation.* This clause implements the Trade, Agreements Act (19 U.S.C. 2501, et seq.) and the North American Free Trade Agreement Implementation Act of 1993, (NAFTA) (19 U.S.C. 3301 note), by restricting the acquisition of end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.
- (c) *Delivery of end products.* The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 2003)

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.epls.gov/TrList1.html>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

552.212-72 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (SEP 2003)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

(a) Provisions.

* ___ * 552.223-72 Hazardous Material Information

(b) Clauses.

* X * 552.223-70 Hazardous Substances

* X * 552.223-71 Nonconforming Hazardous Material

* ___ * 552.238-70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped

* X * 552.238-72 Identification of Products That Have Environmental Attributes

C-ESS-370 CONTRACTOR TASKS / SPECIAL REQUIREMENTS (NOV 2003)

- (a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.
- (b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- (c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- (d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

- (e) **Personnel:** The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- (f) **Organizational Conflicts of Interest:** Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.
- (g) **Documentation/Standards:** The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- (h) **Data/Deliverable Requirements:** Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) **Government-Furnished Property:** As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) **Availability of Funds:** Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.
- (k) **Overtime:** For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

52.212-1 INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (OCT 2003)

- (a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.
- (b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—
 - (1) The solicitation number;
 - (2) The time specified in the solicitation for receipt of offers;
 - (3) The name, address, and telephone number of the offeror;
 - (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
 - (5) Terms of any express warranty;
 - (6) Price and any discount terms;
 - (7) "Remit to" address, if different than mailing address;
 - (8) A completed copy of the representations and certifications at FAR 52.212-3;
 - (9) Acknowledgment of Solicitation Amendments;
 - (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
 - (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

- (c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.
- (d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.
- (e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.
- (f) Late submissions, modifications, revisions, and withdrawals of offers.
 - (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.
 - (2)
 - (i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—
 - (A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
 - (B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
 - (C) If this solicitation is a request for proposals, it was the only proposal received.
 - (ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
 - (3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
 - (4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
 - (5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.
- (g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.
- (h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

- (i) Availability of requirements documents cited in the solicitation.
- (1) (i) Availability of requirements documents cited in the solicitation. (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--GSA Federal Supply Service Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619-8925, Facsimile (202) 619-8978.
- (ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.
- (2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the--Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.
- (i) Automatic distribution may be obtained on a subscription basis.
- (ii) Order forms, pricing information, and customer support information may be obtained--
- (A) By telephone at (215) 697-2667/2179; or
- (B) Through the DoDSSP Internet site at <http://dodssp.daps.mil>.
- (3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication or maintenance.
- (j) Data Universal Numbering System (DUNS) Number. (Applies to all offers exceeding \$25,000, and offers of \$25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address. The DUNS +4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.
- (k) Central Contractor Registration. Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

52.212-4

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (OCT 2003)

- (a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.
- (c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

- (d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.
- (e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.
- (f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- (g) *Invoice.*
- (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—
 - (i) Name and address of the Contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number, contract line item number and, if applicable, the order number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
 - (vi) Terms of any discount for prompt payment offered;
 - (vii) Name and address of official to whom payment is to be sent;
 - (4) Name, title, and phone number of person to notify in event of defective invoice; and
 - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract
- Electronic funds transfer (EFT) banking information.

The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

EFT banking information is not required if the Government waived the requirement to pay by EFT.

- (2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.
- (h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

- (j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:
- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.
- (k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.
- (l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.
- (o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- (p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

- (r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.
- (s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.
- (t) *Central Contractor Registration (CCR).*
- (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (2) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.
- (ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.
- (3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
- (4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (OCT 2003)

- (a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- (1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]
- * X * (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

- * ___ * (2) 52.219-3, Notice of Total HUBZone Set-Aside (JAN 1999) (15 U.S.C. 657a).
- * ___ * (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- * ___ * (4) (i) 52.219-5, Very Small Business Set-Aside (JUN 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
- * ___ * (ii) Alternate I (MAR 1999) of 52.219-5.
- * ___ * (iii) Alternate II (JUN 2003) of 52.219-5.
- * ___ * (5) (i) 52.219-6, Notice of Total Small Business Set-Aside (JUN 2003) (15 U.S.C. 644).
- * ___ * (ii) Alternate I (OCT 1995) of 52.219-6.
- * ___ * (6) (i) 52.219-7, Notice of Partial Small Business Set-Aside (JUN 2003) (15 U.S.C. 644).
- * ___ * (ii) Alternate I (OCT 1995) of 52.219-7.
- * X * (7) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637 (d) (2) and (3)).
- * ___ * (8) (i) 52.219-9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C. 637 (d)(4)).
- * ___ * (ii) Alternate I (OCT 2001) of 52.219-9.
- * ___ * (iii) Alternate II (OCT 2001) of 52.219-9.
- * ___ * (9) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637 (a) (14)).
- * ___ * (10) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUN 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- * ___ * (ii) Alternate I (JUN 2003) of 52.219-23.
- * ___ * (11) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- * ___ * (12) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- * X * (13) 52.222-3, Convict Labor (JUN 2003) (E.O. 11755).
- * X * (14) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (SEP 2002) (E.O. 13126)
- * X * (15) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
- * X * (16) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
- * X * (17) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
- * X * (18) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- * X * (19) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

- * ___ * (20) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962 (e) (3) (A) (ii)).
(ii) Alternate I (AUG 2000) of 52.223-9 (42 U.S.C. 6962 (i) (2) (C)).
 - * ___ * (21) 52.225-1, Buy American Act—Supplies (JUN 2003) (41 U.S.C. 10a-10d).
 - * ___ * (22) (i) 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (JUN 2003) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
(ii) Alternate I (MAY 2002) of 52.225-3.
(iii) Alternate II (MAY 2002) of 52.225-3.
 - * X * (23) 52.225-5, Trade Agreements (OCT 2003) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
 - * ___ * (24) 52.225-13, Restrictions on Certain Foreign Purchases (OCT 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
 - * ___ * (25) 52.225-15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).
 - * X * (26) 52.225-16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).
 - * ___ * (27) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
 - * ___ * (28) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307 (f)).
 - * X * (29) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) (31 U.S.C. 3332).
 - * X * (30) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).
 - * X * (31) 52.232-36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).
 - * X * (32) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).
 - * X * (33) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).
(ii) Alternate I (APR 1984) of 52.247-64.
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]
- * ___ * (1) 52.222-41, Service Contract Act of 1965, as Amended (MAY 1989) (41 U.S.C. 351, et seq.).
 - * ___ * (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - * ___ * (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - * ___ * (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - * X * (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (MAY 1989) (41 U.S.C. 351, et seq.).

- (d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.
- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
 - (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
 - (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—
- (5) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (6) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

22-41, Service Contract Act of 1965, as Amended (MAY 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

47-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

- (2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

(a) Method of payment.

- (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

- (b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.
- (c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.
- (d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (e) Liability for uncompleted or erroneous transfers.
 - (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.
 - (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—
 - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
 - (i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

552.232-77 PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAR 2000)
(ALTERNATE 1—MAR 2000)

(a) Definitions.

"Governmentwide commercial purchase card" means a uniquely numbered credit card issued by a contractor under GSA's Governmentwide Contract for Fleet, Travel, and purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

"Oral order" means an order placed orally either in person or by telephone.

- (b) The Contractor must accept the Governmentwide commercial purchase card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.
- (c) The Contractor and the ordering agency may agree to use the Governmentwide commercial purchase card for dollar amounts over the micro-purchase threshold, and the Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency's established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.
- (d) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.
- (e) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

CONTRACTOR OWNERSHIP INFORMATION

The Garland Company, Inc. is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, state agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:

www.pd.dgs.ca.gov

(click on CMAS click on State Agencies)

In response to our commitment to increase participation by small businesses, the Department of General Services is **waiving the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.**

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.

- b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

NEW EQUIPMENT REQUIRED

The State will procure new equipment. All equipment must be new (or warranted as newly manufactured) and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Where Federal Energy Management Program (FEMP) standards are available, all state agencies shall purchase only those products that meet the recommended standards. All products displaying the Energy Star label meet the FEMP standards.

ELECTRONIC WASTE RECYCLING

The Electronic Waste Recycling Act of 2003 requires retailers to collect a recycling fee from consumers on covered electronic devices starting January 1, 2005. California Public Resources Code, Section 42463(f) defines a "covered electronic device" as a video display device containing a screen greater than four inches measured diagonally. See the code identified above for more information and exceptions to this definition.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

The Integrated Waste Management Board is implementing this new legislation, and the Board of Equalization is responsible for collecting these recycling fees from retailers. See the following two websites for more information on this topic:

<http://www.ciwmb.ca.gov/Electronics/Act2003/>

<http://www.boe.ca.gov/sptaxprog/ewaste.htm>

The electronic waste recycling fee must be shown as a line item on the agency purchase order before the Contractor can include it on their invoice.

PUBLIC WORKS (INSTALLATION SERVICES ONLY)

A public works contract is defined as an agreement for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" in accordance with the Public Contract Code (PCC) Section 1101. State agencies planning these types of projects need to review the State Contracting Manual (SCM) Sections 10 and 11 and the CMAS Agency Packet, Public Works Projects for applicable guidelines and regulations. Also, the Department of General Services (DGS), Real Estate Services Division (RESD) can be contacted at 916/376-1748 if you have questions about these types of transactions.

Agency CMAS orders may allow for a public works component only when the service is incidental to the overall project requirements. Agencies are to ensure that the applicable laws and codes pertaining to the contractor and sub-contractor licensing, prevailing wage rates, bonding, labor code requirements, etc. are adhered to by the prime contractor as well as any sub-contractor during performance under the CMAS purchase order. The total dollar value of all services included in a purchase order must not exceed the dollar value of the products.

The bond amount for public works has increased to a sum not less than one hundred percent (100%) of the purchase order price.

Note: In accordance with Labor Code Section 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency's office, and will be made available upon request. The prevailing wage rates are available from the DIR at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774.

Ordering Instructions and Special Provisions

Bonds: For guidelines, see CMAS contract, General Terms and Conditions, Public Works Requirements. Also, see CMAS Agency Packet, Administrative Requirements for Bonds and Other Security Documents.

EXCLUSIONS - ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL AND LEGAL SERVICES

The following services are not available on the CMAS program:

1. Architectural, Engineering and Environmental Services

Services are not allowed on CMAS that are required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental services as defined in Government Code 4525. If you have questions about these types of transactions, the Department of General Services (DGS), Real Estate Services Division (RESD) can be contacted at 916/376-1748.

2. Legal Services

Contracting for legal services by state agencies is controlled by statutes (GC 11040) that require Attorney General approval prior to entering into contracts with outside counsel. Additionally, Article VII of the California Constitution requires that state legal work be performed by state employees, absent limited exceptions (Government Code 19130). There are also policy-based approval requirements for all Executive Branch agencies that control the use of private counsel.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the following Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

Contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the Federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's Federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Notwithstanding this, there is no guarantee that "every" possible requirement that pertains to all the different and unique state processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to the CMAS Agency Packet for Statewide Procurement Requirements, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements of SAM Section 5203
- SAM Section 4819.41 and 4832 certifications for information technology procurements and compliance with policies.

- Services may not be paid for in advance.
- Agencies must adhere to the guidelines in SAM Sections 2120/2121 for servicing office equipment.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 state agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the CMAS contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD; Technical questions: 916/651-6945 or Information and forms: 916/657-0529.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than \$5,000. Copies of negative evaluations must be sent to the DGS Office of Legal Services. The Bureau of State Audits requires state agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information,

Contractor participation is voluntary.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

PAYMENTS AND INVOICES**1. Payment Terms**

Payment terms for this contract are 1.5%-10 days, net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each state accounting office must have a copy of the attached Payee Data Record (Std. 204) in order to process payment of invoices. Agencies should forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative Fee

The Department of General Services (DGS) will bill each state and local agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This fee is waived for purchase orders to California certified small businesses.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

The Garland Company, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders.

7. Lease/Purchase Analysis

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd then click on GS \$Mart™. Buyers without Internet access may contact the GS \$Mart™ Administrator, Pat Mullen by phone at 916/375-4617 or via e-mail at pat.mullen@dgs.ca.gov for further information.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for only maintenance services (i.e. the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.
2. For contracts that provide for both maintenance services and consumable supply items (i.e. toner, developer, and staples, for example), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, state agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

The contractor will be required to itemize the consumables being taxed for state accounting purposes.

CONTRACTOR QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete and returned to the contractor.

To facilitate collection of administrative fees, copies of local government agency purchase orders must accompany the CMAS quarterly report. This new requirement is effective beginning the second quarter of 2005, for reports due in the CMAS office within two weeks after the end of June 2005.

New contracts for contractors with existing contracts, and extensions or renewals of existing contracts, will be approved ONLY if the contractor has submitted to the CMAS Unit all quarterly reports due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

Ordering Instructions and Special Provisions

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

A sample quarterly report indicating required format and information is attached for your reference (Attachment A).

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- Payee Data Record (Std. 204).
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions.
- Federal GSA products, services, and price list.
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at, or below, contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and state laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment B for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

Phone # 916/375-4363
Fax # 916/375-4663

Calnet # 8/480-4363

Want to know more about CMAS? We welcome the opportunity to present the details of this program to your agency or group. Please contact the California Multiple Award Schedules Unit at 916/375-4363 or Calnet 8/480-4363 to arrange a date and time.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

ATTACHMENT A

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

A quarterly report is required even when there is no activity for the quarter.

Copies of local government agency purchase orders must accompany the CMAS quarterly report.

1. Calendar Quarter Number: (Quarter # and Year)
2. CMAS Contract Number: XX-XX-XX-XXXXX (including alpha suffix if applicable)
3. Contractor: Company Name and Address
4. Contractor Contact: Name and Phone Number

5.	6.	7.	8.	9.	10.	11.	12.	
Agency Name	Purchase Order Number	Purchase Order Date	Agency Billing Code	Total Dollars per Purchase Order	Agency Contact	Agency Address	Phone Number	
			FORMAT					

13. Total dollars for quarter: \$ _____

The Quarterly Report must contain all of the above data elements, but may be in a landscape report format.

1. Identify the calendar quarter number and year for the report you are submitting.
2. Identify your company's CMAS contract number. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Multiple contracts on Std. 65 State Purchase Order form should be itemized by contract number. For each individual contract (as differentiated by alpha suffix), identify and group together the contract number with line items and subtotal per contract number (do not include tax in the subtotal).
3. Identify your company name and mailing address.
4. Identify the company contact and phone number for the CMAS contract or the person preparing and submitting the report.
5. Identify the State Agency or local government that issued the CMAS order.
6. Identify the purchase order number (and supplement number if applicable) on the order form. This is not your invoice number. This is the number the agency or local government assigns to the order.
7. Identify the date the purchase order was issued. This is not the date you received, accepted, or invoiced the order.
8. Identify the State Agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Local governments will not reference a billing code. You may leave this blank for local government orders.
9. Identify the total dollars of each purchase order before tax. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount regardless of when you invoice order, perform services, deliver product, or receive payment. For amended orders, enter the incremental increase/decrease only.
10. Identify the "Bill To" agency or local government CONTACT on the purchase order.
11. Identify the "Bill To" agency or local government ADDRESS on the purchase order.
12. Identify the agency or local government phone number on the purchase order.
13. Identify the total dollars pre-tax for all orders placed in that calendar quarter.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
 THE GARLAND COMPANY, INC.
 CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1

ATTACHMENT B

ADA NOTICE

Procurement Division (State Department of General Services)
 AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
 Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922 or 1-888-877-5379
 TTY: 1-800-735-2929 or 1-888-877-5378
 Speech-to-Speech: 1-800-854-7784

CMAS CONTRACTOR PACKET
EXHIBIT Q - PAYEE DATA RECORD

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE
PAYEE DATA RECORD
(Required when receiving payment from the State of California in lieu of IRS W-9)
STD. 204 (Rev. 8-2003)

1	INSTRUCTIONS: Complete all information on this form. Sign, date, and return to the State agency (department/office) address shown at the bottom of this page. Prompt return of this fully completed form will prevent delays when processing payments. Information provided in this form will be used by State agencies to prepare Information Returns (1099). See reverse side for more information and Privacy Statement. NOTE: Governmental entities, federal, State, and local (including school districts), are not required to submit this form.		
2	PAYEE'S LEGAL BUSINESS NAME (Type or Print) The Garland Company		E-MAIL ADDRESS msire@garlandind.com
	SOLE PROPRIETOR - ENTER NAME AS SHOWN ON SSN (Last, First, M.I.)		
	MAILING ADDRESS 3800 East 91st Street	BUSINESS ADDRESS same	
	CITY, STATE, ZIP CODE Cleveland, Ohio 44105	CITY, STATE, ZIP CODE	
3	ENTER FEDERAL EMPLOYER IDENTIFICATION (FEIN): 1314-11594101818	NOTE: Payments will not be processed without an accompanying taxpayer I.D. number.	
PAYEE ENTITY TYPE	<input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> ESTATE OR TRUST <input type="checkbox"/> INDIVIDUAL OR SOLE PROPRIETOR ENTER SOCIAL SECURITY NUMBER: _____	CORPORATION: <input type="checkbox"/> MEDICAL (e.g. dentistry, psychotherapy, chiropractic, etc.) <input type="checkbox"/> LEGAL (e.g. attorney services) <input type="checkbox"/> EXEMPT (nonprofit) <input checked="" type="checkbox"/> ALL OTHERS	
CHECK ONE BOX ONLY	(SSN required by authority of California Revenue and Tax Code Section 18846)		
4	PAYEE RESIDENCY STATUS <input type="checkbox"/> California resident - Qualified to do business in California or maintains a permanent place of business in California. <input checked="" type="checkbox"/> California nonresident (see reverse side) - Payments to nonresidents for services may be subject to State income tax withholding. <input type="checkbox"/> No services performed in California. Copy of Franchise Tax Board mail or of State withholding attached.		
5	I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the State agency below.		
	AUTHORIZED PAYEE REPRESENTATIVE'S NAME (Type or Print) Mary Jo Shea		TITLE Dir. of Marketing
	SIGNATURE Mary Jo Shea	DATE June 14, 2005	TELEPHONE 415 800 762 8225
6	Please return completed form to: Department/Office: Department of General Services, Procurement Division Unit/Section: CMAS Section Mailing Address: 707 3rd Street, 2nd Floor City/State/Zip: West Sacramento, CA 95805 Telephone: (916) 375-4265 Fax: (916) 375-4863 E-mail Address: cmass@dgs.ca.gov		

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
 - a) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - b) **"Buyer"** means the State's authorized contracting official.
 - c) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - d) **"Contractor"** means the Business Entity with whom the State enters into this contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - e) **"Goods"** (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
 - f) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
4. **SEVERABILITY:** The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
 - a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
 - b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
8. **CONTRACTOR'S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.
9. **CMAS -- ASSIGNMENT:** This contract shall not be assignable by the contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

Should the State desire financing of the assets provided hereunder through GS \$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
10. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
 - a) these General Provisions – Non-IT Commodities;
 - b) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
 - c) federal GSA (or other multiple award) terms and conditions;
 - d) statement of work, including any specifications incorporated by reference herein;
 - e) special terms and conditions; and
 - f) all other attachments incorporated in the contract by reference.
12. **PACKING AND SHIPMENT:**
 - a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.
 - b) All shipments by contractor or its subcontractors must include packing sheets identifying the State's contract

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

- number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.
- 13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.
- a) Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
- 14. TIME IS OF THE ESSENCE:** Time is of the essence in this contract.
- 15. DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.
- 16. SUBSTITUTIONS:** Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.
- 17. INSPECTION, ACCEPTANCE AND REJECTION:**
- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.
- b) All goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance by the State shall not waive any rights that the State might otherwise have at law or by express reservation in this contract with respect to any nonconformity.
- 18. SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.
- 19. CMAS -- WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.
- Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.
- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.
- 20. SAFETY AND ACCIDENT PREVENTION:** In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

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GSPD-401 Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

21. **INSURANCE:** When performing work on property in the care, custody or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the buyer, the contractor may be required to have the State shown as an "additional insured" on selected policies.
22. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.
- b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
23. **TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
- b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- Stop work as specified in the Notice of Termination.
 - Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - Terminate all subcontracts to the extent they relate to the work terminated.
 - Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
24. **TERMINATION FOR DEFAULT:**
- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
- Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
 - Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
 - Perform any of the other provisions of this contract (but see subparagraph (b), below).
- b) The State's right to terminate this contract under subparagraphs (a)(i) and (a)(ii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
- c) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d) If the contract is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
- Completed goods, and
 - Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.
25. **FORCE MAJEURE:**
- Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:
- Acts of God or of the public enemy, and
 - Acts of the federal or state government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other

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sources in sufficient time for the contractor to meet the required delivery schedule.

26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items which the contractor agreed to supply shall be borne and paid for by the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

28. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. TAXES: Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.

32. NEWLY MANUFACTURED GOODS: All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

33. CONTRACT MODIFICATION: No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

34. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

35. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

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- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
- i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such goods or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- e) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
 - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii) The modification by the State of the equipment furnished hereunder or of the software; or
 - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights or trade secrets.
37. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.
38. **DISPUTES:**
- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
 - b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
 - c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
39. **STOP WORK:**
- a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this

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- clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i) Cancel the Stop Work Order; or
 - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
- i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
 - ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
40. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
41. **COVENANT AGAINST GRATUITIES:** The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
42. **NONDISCRIMINATION CLAUSE:**
- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.
43. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
44. **ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
 - b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.
 - c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i) the assignee has not been injured thereby, or
 - ii) the assignee declines to file a court action for the cause of action.

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45. **DRUG-FREE WORKPLACE CERTIFICATION:** The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - the dangers of drug abuse in the workplace;
 - the person's or organization's policy of maintaining a drug-free workplace;
 - any available counseling, rehabilitation and employee assistance programs; and,
 - penalties that may be imposed upon employees for drug abuse violations.
 - Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - will receive a copy of the company's drug-free policy statement; and,
 - will agree to abide by the terms of the company's statement as a condition of employment on the contract.
46. **FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
47. **SWEATFREE CODE OF CONDUCT:**
- Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov and Public Contract Code Section 6108.
 - Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
48. **RECYCLING:** Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.
49. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:
- The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
50. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
51. **UNION ACTIVITIES:** For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that: by submitting a signed offer, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:
- Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
 - No state funds received under this agreement will be used to assist, promote or deter union organizing.
 - Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
 - If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.
52. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
53. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

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54. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the State.
55. **DOMESTIC PARTNERS:** Commencing on July 1, 2004, Contractor certifies that it is in compliance with the applicable provisions of PCC Section 10295.3 with regard to benefits for domestic partners.

ADDITIONAL CMAS TERMS AND CONDITIONS

56. **CMAS -- CONTRACTOR'S LICENSE REQUIREMENTS:**
Contracts that include installation or the wording "Furnish and Install" require at the time of contract award that contractors possess a valid California State Contractor's License. If sub-contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for contract revocation.
57. **CMAS -- PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**
- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price. Forms shall be provided to the Contractor.
 - b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.
 - c) The Contractor hereby certifies by signing this Contract that:
 - i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.
 - ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.
 - d) Laws to be Observed
 - i) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.

- ii) Worker's Compensation Insurance
The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.
 - iii) Travel and Subsistence Payments
Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
 - iv) Apprentices
Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.
 - v) Payroll
The Contractor shall keep an accurate payroll record /showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in section 1776 of the California Labor Code.
58. **CMAS -- TERMINATION OF CMAS CONTRACT:**
- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.
 - b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered terminated on the same date.
 - c) Upon termination or other expiration of this Contract, each party will assist the other party in orderly termination of the

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

- Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
- d) Prior to the expiration of this Contract, this Contract may be terminated for the convenience of both parties by mutual consent.
- e) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.
59. **CMAS -- CONTRACT AMOUNT:** There is no guarantee of minimum purchase of Contractor's products or services by the State.
60. **CMAS -- DEBARMENT CERTIFICATION (FEDERALLY FUNDED SERVICE CONTRACTS OVER \$10,000):** When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
61. **CMAS -- PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT:** All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:
- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.
62. **CMAS -- CONFLICT OF INTEREST:**
- a) Current State Employees (Public Contract Code Section 10410):
- i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
- ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) Former State Employees (Public Contract Code Section 10411):
- i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.
- ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.
63. **CMAS -- SUBCONTRACTING REQUIREMENTS:** Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract/purchase order, and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all contractual, administrative, and technical requirements of the Contract/purchase order, as applicable.
64. **CMAS -- RENTAL AGREEMENTS:**
- The State does not agree to:
- Indemnify a contractor;
 - Assume responsibility for matters beyond its control;
 - Agree to make payments in advance;
 - Accept any other provision creating a contingent liability against the State; or
 - Agree to obtain insurance to protect the Contractor.
- The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.
- If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment property.
- Personal property taxes are not generally reimbursed when leasing equipment (SAM 873B).
65. **CMAS -- LEASE (Lease \$Mart™):** If an agency desires to lease through Lease \$Mart™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.
66. **CMAS -- QUARTERLY REPORTS:** Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each contract, as differentiated by alpha suffix.
67. **CMAS -- LIQUIDATED DAMAGES:** In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The

May 2005

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

May 2005

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**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

AVAILABLE PRODUCTS AND/OR SERVICES

This contract provides for the purchase and warranty of roofing and flooring materials.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA #GS-07F-0130K (THE GARLAND COMPANY, INC.) with a GSA term of 1/20/2005 through 1/19/2010 including modification A017. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

ISSUE PURCHASE ORDER TO:

Agency purchase orders must be mailed to the following address, or faxed to 216/641-0633:

The Garland Company, Inc.
3800 East 91st Street
Cleveland, OH 44105

Attn: Mary Jo Shea

Agencies with questions regarding products and/or services may contact the contractor as follows:

Phone: 800/321-9336 x3631
E-mail: mshoa@garlandinc.com

RETAILER'S SELLER'S PERMIT

The Garland Company, Inc.'s California Retailer's Seller's Permit No. is 30651030. Agencies can verify that this permit is still valid at the following website: www.boe.ca.gov.

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

DELIVERY

30 days after receipt of order, or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

MAXIMUM ORDER LIMITS (Local Governments are Exempt)

CMAS purchases are limited to \$250,000 or less for information technology (IT) goods and services and non-information technology services and \$100,000 or less for commodities (non-IT products) subject to the following solicitation requirements:

- State agencies must solicit a minimum of 3 contractors including 1 small business and/or DVBE (if available) and document responses. This is not a bid transaction so small business preference, protest language, intents to award, evaluation criteria, advertising, etc. are not applicable.
- If less than 3 offers received, state agencies must document their files with the reasons why the other suppliers solicited did not respond with an offer.
- If only one source is known (competing offers cannot be obtained), the non-competitive bid (NCB) contract process must be followed. See the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, for NCB guidelines.
- Evaluation and award may be based on best value, as applicable, and not restricted to lowest cost.
- For CMAS transactions under \$5000 only one offer is required if the state agency can establish and document that the price is fair and reasonable.

Exempt entities and local governments are not subject to these order limits. Go to DGS/PD web site www.dgs.ca.gov/pd to obtain a copy of the most current Management Memo.

There are guidelines under which CMAS purchase orders for information technology goods and services may exceed \$250,000 up to \$500,000 (no exemptions). For guidelines, see the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, and CMAS Bulletins.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

The minimum dollar value of an order to be issued under this contract is \$100.00.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms). The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65: <http://www.osp.dgs.ca.gov/pdf/std065.pdf>

2. Purchase Orders

The agency is required to forward a copy of each purchase order to the Department of General Services (DGS), Procurement Division, Data Management, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811 (IMS# Z-1).

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals. See the CMAS Services Guide at www.dgs.ca.gov/pd (click on CMAS) for guidelines pertaining to all orders for services.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

Ordering Instructions and Special Provisions

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

Also, purchase order amendments cannot be issued to add product or services if the CMAS contract end term has expired. However, an amendment is acceptable if it only extends the end term date of the purchase order and no cost increase.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see CMAS Agency Packet, Purchase Order Dollar Limits and Procedures.

5. Amendments to Department's Purchase Orders

Management Memo 03-10 provides the following direction regarding amendments to department purchase orders:

Orders for IT Goods & Services or Non-IT Goods: Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment.

Orders for Non-IT Services: Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed.

Also see the Purchasing Authority Manual, Chapter 8, Topic 7, for more information on amending purchase orders.

CONTRACT PRICES

Contract prices for products and/or services are maximums. The ordering agency is encouraged to negotiate lower prices.



State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency

DEPARTMENT OF GENERAL SERVICES
Procurement Division

June 16, 2005

Award of Renewal Contract
The Garland Company, Inc.
Contract Number 4-01-56-0006A, Supplement No. 1

The State of California accepts your firm's offer and renews the attached California Multiple Award Schedule (CMAS) contract for the term identified on page one of the contract. The contract has been awarded the same contract number as the original CMAS contract. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm.

Agencies may procure their products and/or services from your firm during the term of this contract. This acceptance letter, the attached CMAS contract pages including ordering instructions and special provisions as well as CMAS Terms and Conditions, and the applicable product/services catalog or listing shall be considered part of the CMAS contract.

It is your firm's responsibility to furnish, upon request, copies of the CMAS contract to state and local agencies. A complete CMAS contract includes the following: 1) CMAS cover pages (signature page, ordering instructions and special provisions as prepared by the CMAS Unit), Std. 204 Payee Data Record, and any attachments or exhibits as prepared by the CMAS Unit, 2) CMAS Terms and Conditions, 3) Federal terms and conditions, and 4) product/service listing and prices (if not already included in the aforementioned). The CMAS Unit strongly recommends to all government agencies to place orders with suppliers who provide ALL of the contract elements described above.

Contractors are required to submit a quarterly report (refer to CMAS Terms and Conditions, Provision 59) to the DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix and shall include the activity of the contractor's authorized CMAS resellers when applicable. This report is required within two weeks after the end of March, June, September, and December of each calendar year. Copies of local government agency purchase orders must accompany the CMAS quarterly report. A report is required even when there is no activity.

THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q2-2005 (APRIL-JUNE),
DUE BY JULY 15, 2005.

If your firm has an electronic Bulletin Board System (BBS) available to state departments for on-line inquiry of current catalog or listing updates, or your catalog(s) or listing(s) are available on CD ROM, please inform our agencies of how they may avail themselves of these options.

We remind you that prior approval is required from the state for all news releases regarding this contract. Also, it is not acceptable to include any products or services on CMAS which are not approved for the federal GSA award schedule (or other base contract) referenced in your CMAS contract.

Should you have any questions, please contact me at 916/375-4580.

CATHLEEN GUILDAY
CATHLEEN GUILDAY, Program Analyst
California Multiple Award Schedules Unit

Attachment

The Ziggurat • 707 Third Street, Second Floor • West Sacramento, CA 95605 • (916) 375-4400



Department of General Services
 Procurement Division
 707 Third Street, 2nd Floor
 West Sacramento, CA 95605-2811

State of California
MULTIPLE AWARD SCHEDULE
SUPPLEMENT NO. 1
The Garland Company, Inc.

4-01-56-0006A - Construction-Roofing Material Construction-Flooring-Epoxy
--


(Above descriptions for marketing purposes only. Review contract for products/services available.)

CONTRACT NUMBER:	4-01-56-0006A
CMAS TERM DATES:	6/16/2005 through 4/30/2010
DISTRIBUTION:	STATEWIDE

The purpose of this supplement is to renew this contract through 4-30-10. In addition, this supplement replaces in its entirety The Garland Company, Inc.'s existing California Multiple Award Schedule (CMAS) that expired on 4-30-05. The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated May 2005, products and/or services and pricing are included herein. Please review these provisions carefully because they may have changed since issuance of your last contract.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.


 _____ Effective Date: **6/16/2005**
 CATHLEEN GUILDAY, Program Analyst, California Multiple Award Schedules Unit

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
 THE GARLAND COMPANY, INC.
 CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1

AVAILABLE PRODUCTS AND/OR SERVICES

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PURCHASING AUTHORITY DOLLAR THRESHOLD

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- If only one source is known (competing offers cannot be obtained), the non-competitive bid (NCB) contract process must be followed. See the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, for NCB guidelines.
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CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1

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The minimum dollar value of an order to be issued under this contract is \$100.00.

ORDERING PROCEDURES

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The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

Ordering Instructions and Special Provisions

3. Service and Delivery after Contract Expiration

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5. Amendments to Department's Purchase Orders

Management Memo 03-10 provides the following direction regarding amendments to department purchase orders:

Orders for IT Goods & Services or Non-IT Goods: Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment.

Orders for Non-IT Services: Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed.

Also see the Purchasing Authority Manual, Chapter 8, Topic 7, for more information on amending purchase orders.

CONTRACT PRICES

Contract prices for products and/or services are maximums. The ordering agency is encouraged to negotiate lower prices.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

CONTRACTOR OWNERSHIP INFORMATION

The Garland Company, Inc. is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, state agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:
www.pd.dgs.ca.gov
(click on CMAS click on State Agencies)

In response to our commitment to increase participation by small businesses, the Department of General Services is waiving the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.

- b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

NEW EQUIPMENT REQUIRED

The State will procure new equipment. All equipment must be new (or warranted as newly manufactured) and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Where Federal Energy Management Program (FEMP) standards are available, all state agencies shall purchase only those products that meet the recommended standards. All products displaying the Energy Star label meet the FEMP standards.

ELECTRONIC WASTE RECYCLING

The Electronic Waste Recycling Act of 2003 requires retailers to collect a recycling fee from consumers on covered electronic devices starting January 1, 2005. California Public Resources Code, Section 42463(f) defines a "covered electronic device" as a video display device containing a screen greater than four inches measured diagonally. See the code identified above for more information and exceptions to this definition.

Ordering Instructions and Special Provisions

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

The Integrated Waste Management Board is implementing this new legislation, and the Board of Equalization is responsible for collecting these recycling fees from retailers. See the following two websites for more information on this topic:

<http://www.ciwmb.ca.gov/Electronics/Act2003/>

<http://www.boe.ca.gov/sptaxprog/ewaste.htm>

The electronic waste recycling fee must be shown as a line item on the agency purchase order before the Contractor can include it on their invoice.

PUBLIC WORKS (INSTALLATION SERVICES ONLY)

A public works contract is defined as an agreement for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" in accordance with the Public Contract Code (PCC) Section 1101. State agencies planning these types of projects need to review the State Contracting Manual (SCM) Sections 10 and 11 and the CMAS Agency Packet, Public Works Projects for applicable guidelines and regulations. Also, the Department of General Services (DGS), Real Estate Services Division (RESD) can be contacted at 916/376-1748 if you have questions about these types of transactions.

Agency CMAS orders may allow for a public works component only when the service is incidental to the overall project requirements. Agencies are to ensure that the applicable laws and codes pertaining to the contractor and sub-contractor licensing, prevailing wage rates, bonding, labor code requirements, etc. are adhered to by the prime contractor as well as any sub-contractor during performance under the CMAS purchase order. The total dollar value of all services included in a purchase order must not exceed the dollar value of the products.

The bond amount for public works has increased to a sum not less than one hundred percent (100%) of the purchase order price.

Note: In accordance with Labor Code Section 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency's office, and will be made available upon request. The prevailing wage rates are available from the DIR at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774.

Bonds: For guidelines, see CMAS contract, General Terms and Conditions, Public Works Requirements. Also, see CMAS Agency Packet, Administrative Requirements for Bonds and Other Security Documents.

EXCLUSIONS - ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL AND LEGAL SERVICES

The following services are not available on the CMAS program:

1. Architectural, Engineering and Environmental Services

Services are not allowed on CMAS that are required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental services as defined in Government Code 4525. If you have questions about these types of transactions, the Department of General Services (DGS), Real Estate Services Division (RESD) can be contacted at 916/376-1748.

2. Legal Services

Contracting for legal services by state agencies is controlled by statutes (GC 11040) that require Attorney General approval prior to entering into contracts with outside counsel. Additionally, Article VII of the California Constitution requires that state legal work be performed by state employees, absent limited exceptions (Government Code 19130). There are also policy-based approval requirements for all Executive Branch agencies that control the use of private counsel.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the following Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

Contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

- | | |
|--|---|
| <p>2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.</p> <p>3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the contract may not be identified as an NSP item.</p> | <p>6. Products or services the contractor is NOT factory authorized or otherwise certified or trained to provide.</p> <p>7. Follow-on consultant services that were previously recommended or suggested by the same contractor.</p> |
|--|---|

4. **Maximum Order Limitation:** For orders \$250,000.00, or less, the total dollar value of all NSP items included in a purchase order shall not exceed \$5,000.00. For orders exceeding \$250,000.00, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or \$25,000.00 whichever is lower.

5. An NSP item included in an order issued against a contract is subject to all of the terms and conditions set forth in the contract.

6. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this contract:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.
2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.
3. Items that do not meet the Productive Use Requirements for information technology products. (SAM Section 5203)
4. Any other item or class of items specifically excluded from the scope of this contract.
5. Public Works components NOT incidental to the overall project requirements.

Ordering Instructions and Special Provisions

The contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges, that is empowered to expend public funds. While the state makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
- A CMAS amendment is required for changes to contracts that require Prison Industry Authority (PIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
 THE GARLAND COMPANY, INC.
 CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the Federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's Federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Notwithstanding this, there is no guarantee that "every" possible requirement that pertains to all the different and unique state processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to the CMAS Agency Packet for Statewide Procurement Requirements, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements of SAM Section 5203
- SAM Section 4819.41 and 4832 certifications for information technology procurements and compliance with policies.

- Services may not be paid for in advance.
- Agencies must adhere to the guidelines in SAM Sections 2120/2121 for servicing office equipment.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 state agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the CMAS contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than \$5,000. Copies of negative evaluations must be sent to the DGS Office of Legal Services. The Bureau of State Audits requires state agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1**

PAYMENTS AND INVOICES**1. Payment Terms**

Payment terms for this contract are 1.5%-10 days, net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each state accounting office must have a copy of the attached Payee Data Record (Std. 204) in order to process payment of invoices. Agencies should forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative Fee

The Department of General Services (DGS) will bill each state and local agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This fee is waived for purchase orders to California certified small businesses.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

The Garland Company, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders.

7. Lease/Purchase Analysis

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/jpd then click on GS \$Mart™. Buyers without Internet access may contact the GS \$Mart™ Administrator, Pat Mullen by phone at 916/375-4617 or via e-mail at pat.mullen@dgs.ca.gov for further information.

Ordering Instructions and Special Provisions

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CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
 THE GARLAND COMPANY, INC.
 CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1

9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for only maintenance services (i.e. the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.
2. For contracts that provide for both maintenance services and consumable supply items (i.e. toner, developer, and staples, for example), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, state agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

The contractor will be required to itemize the consumables being taxed for state accounting purposes.

CONTRACTOR QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete and returned to the contractor.

To facilitate collection of administrative fees, copies of local government agency purchase orders must accompany the CMAS quarterly report. This new requirement is effective beginning the second quarter of 2005, for reports due in the CMAS office within two weeks after the end of June 2005.

New contracts for contractors with existing contracts, and extensions or renewals of existing contracts, will be approved ONLY if the contractor has submitted to the CMAS Unit all quarterly reports due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

Ordering Instructions and Special Provisions

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

A sample quarterly report indicating required format and information is attached for your reference (Attachment A).

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- Payee Data Record (Std. 204).
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions.
- Federal GSA products, services, and price list.
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at, or below, contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

See CMAS Agency Packet, Agency Responsibilities and Agency Compliance.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues.

See CMAS Agency Packet, Conflict of Interest for guidelines.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages must be included in the purchase order to be applicable, mutually agreed upon by agency and contractor, and cannot be a penalty.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Origin.

State agencies (not local governments) must follow the instructions below for shipping charges exceeding \$50.00.

All shipments will be made by ground transportation unless otherwise ordered on the Std. 65.

Before placing order, contact the DGS Transportation Management 916/928-5842 to determine the routing of freight shipments. You will need to provide Transportation Management with the point of origin and destination. They will also want to know the commodity being shipped and the estimated shipping weight of the order. If shipping overnight, the account number must be included.

Routing information should be shown on the face of the Contract/Delegation Purchase Order (Std. 65) in the format shown below.

Shipping Instructions:

Supplier route via _____
Carrier's telephone number _____
Annotate bill(s) of lading as follows:
"Freight for account of State of California. Tender Number _____ applies. State of California Purchase Order Number _____
SHIP FREIGHT COLLECT."
Estimated Freight charges: _____

If supplier is unable to use this carrier, call Transportation Management at 916/928-5842.

The following statement must be noted on the purchase order when the commodities are being shipped via UPS (United Parcel Service) and the State is paying directly to UPS (Collect).

Shipping Instructions:

Supplier route via United Parcel Service (surface):
State of California, Department of _____
UPS account number applies.
State of California Purchase Order Number _____
SHIP COLLECT.
Estimated UPS charges: _____

If supplier is unable to use UPS, call Transportation Management at 916/928-5842.

Contractor note: Additional shipping costs incurred by deviation to above shipping instructions, without Traffic Management approval, shall be charged to the contractor.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
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AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and state laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment B for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

Phone # 916/375-4363 Calnet # 8/480-4363
Fax # 916/375-4663

Want to know more about CMAS? We welcome the opportunity to present the details of this program to your agency or group. Please contact the California Multiple Award Schedules Unit at 916/375-4363 or Calnet 8/480-4363 to arrange a date and time.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
 THE GARLAND COMPANY, INC.
 CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 1

ATTACHMENT A

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

A quarterly report is required even when there is no activity for the quarter.

Copies of local government agency purchase orders must accompany the CMAS quarterly report.

1. Calendar Quarter Number: (Quarter # and Year)
2. CMAS Contract Number: XX-XX-XX-XXXXX (including alpha suffix if applicable)
3. Contractor: Company Name and Address
4. Contractor Contact: Name and Phone Number

5.	6.	7.	8.	9.	10.	11.	12.
Agency Name	Purchase Order Number	Purchase Order Date	Agency Billing Code	Total Dollars per Purchase Order	Agency Contact	Agency Address	Phone Number
			FORMAT				

13. Total dollars for quarter: \$ _____

The Quarterly Report must contain all of the above data elements, but may be in a landscape report format.

1. Identify the calendar quarter number and year for the report you are submitting.
2. Identify your company's CMAS contract number. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Multiple contracts on Std. 65 State Purchase Order form should be itemized by contract number. For each individual contract (as differentiated by alpha suffix), identify and group together the contract number with line items and subtotal per contract number (do not include tax in the subtotal).
3. Identify your company name and mailing address.
4. Identify the company contact and phone number for the CMAS contract or the person preparing and submitting the report.
5. Identify the State Agency or local government that issued the CMAS order.
6. Identify the purchase order number (and supplement number if applicable) on the order form. This is not your invoice number. This is the number the agency or local government assigns to the order.
7. Identify the date the purchase order was issued. This is not the date you received, accepted, or invoiced the order.
8. Identify the State Agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Local governments will not reference a billing code. You may leave this blank for local government orders.
9. Identify the total dollars of each purchase order before tax. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount regardless of when you invoice order, perform services, deliver product, or receive payment. For amended orders, enter the incremental increase/decrease only.
10. Identify the "Bill To" agency or local government CONTACT on the purchase order.
11. Identify the "Bill To" agency or local government ADDRESS on the purchase order.
12. Identify the agency or local government phone number on the purchase order.
13. Identify the total dollars pre-tax for all orders placed in that calendar quarter.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
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ATTACHMENT B

ADA NOTICE

Procurement Division (State Department of General Services)
**AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY**

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

CMAS CONTRACTOR PACKET
EXHIBIT Q - PAYEE DATA RECORD

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE
PAYEE DATA RECORD
(Required when receiving payment from the State of California in lieu of IRS W-9)
STD. 254 (Rev. 4-2003)

1	INSTRUCTIONS: Complete all information on this form. Sign, date, and return to the State agency (department/office) address shown at the bottom of this page. Prompt return of this fully completed form will prevent delays when processing payments. Information provided in this form will be used by State agencies to prepare Information Returns (1099). See reverse side for more information and Privacy Statement. NOTE: Governmental entities, federal, State, and local (including school districts), are not required to submit this form.		
2	PAYEE'S LEGAL BUSINESS NAME (Type or Print) The Garland Company SOLE PROPRIETOR - ENTER NAME AS SHOWN ON SSN (Real Prop. 611) E-MAIL ADDRESS MSHR@garlandind.com MAILING ADDRESS BUSINESS ADDRESS 3800 East 91st Street same CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE Cleveland, Ohio 44105		
3	ENTER FEDERAL EMPLOYER IDENTIFICATION (FEIN): 3141-115914101818 <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> ESTATE OR TRUST <input type="checkbox"/> INDIVIDUAL OR SOLE PROPRIETOR ENTER SOCIAL SECURITY NUMBER: _____ <small>(SSN required by authority of California Revenue and Tax Code Section 18446)</small>	CORPORATION: <input type="checkbox"/> MEDICAL (e.g. dentist, physician, chiropractor, etc.) <input type="checkbox"/> LEGAL (e.g. attorney services) <input checked="" type="checkbox"/> EXEMPT (nonprofit) <input type="checkbox"/> ALL OTHERS	NOTE: Payment will not be processed without an accompanying taxpayer ID number.
4	PAYEE RESIDENCY STATUS <input type="checkbox"/> California resident - Qualified to do business in California or maintains a permanent place of business in California <input checked="" type="checkbox"/> California nonresident (see reverse side) - Payments to nonresidents for services may be subject to State income tax withholding. <input type="checkbox"/> No services performed in California. Copy of Franchise Tax Board bill or of State withholding attached.		
5	I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the State agency below. AUTHORIZED PAYEE REPRESENTATIVE'S NAME (Type or Print) TITLE Mary Jo Shea Dir. of Marketing SIGNATURE DATE TELEPHONE Mary Jo Shea June 14, 2005 #4800 762 8225		
6	Please return completed form to: Department/Office: Department of General Services, Procurement Division Unit/Section: CMAS Section Mailing Address: 707 3rd Street, 2nd Floor City/State/Zip: West Sacramento, CA 95805 Telephone: (916) 375-4365 Fax: (916) 375-4863 E-mail Address: cmass@ds.ca.gov		

February 2005

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
- a) "Business entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - b) "Buyer" means the State's authorized contracting official.
 - c) "Contract" means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - d) "Contractor" means the Business Entity with whom the State enters into this contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - e) "Goods" (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
 - f) "State" means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
4. **SEVERABILITY:** The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
 - b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
8. **CONTRACTOR'S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.
9. **CMAS -- ASSIGNMENT:** This contract shall not be assignable by the contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
- Should the State desire financing of the assets provided hereunder through GS SMarT, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
10. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
- a) these General Provisions – Non-IT Commodities;
 - b) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
 - c) federal GSA (or other multiple award) terms and conditions;
 - d) statement of work, including any specifications incorporated by reference herein;
 - e) special terms and conditions; and
 - f) all other attachments incorporated in the contract by reference.
12. **PACKING AND SHIPMENT:**
- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.
 - b) All shipments by contractor or its subcontractors must include packing sheets identifying the State's contract

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- number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.
13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.
- a) Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
14. **TIME IS OF THE ESSENCE:** Time is of the essence in this contract.
15. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.
16. **SUBSTITUTIONS:** Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.
17. **INSPECTION, ACCEPTANCE AND REJECTION:**
- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.
- b) All goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance by the State shall not waive any rights that the State might otherwise have at law or by express reservation in this contract with respect to any nonconformity.
18. **SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.
19. **CMAS -- WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides:
- Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.
- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.
20. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

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21. **INSURANCE:** When performing work on property in the care, custody or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the buyer, the contractor may be required to have the State shown as an "additional insured" on selected policies.
22. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.
 - b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
23. **TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
 - b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - i) Stop work as specified in the Notice of Termination.
 - ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
24. **TERMINATION FOR DEFAULT:**
- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
 - i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
 - ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
 - iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).
 - b) The State's right to terminate this contract under subparagraphs (a)(i) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
 - c) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
 - d) If the contract is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
 - i) Completed goods, and
 - ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
 - e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
 - f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
 - g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.
25. **FORCE MAJEURE:**
- Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
 - b) Acts of the federal or state government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other

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sources in sufficient time for the contractor to meet the required delivery schedule.

- 26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
 - b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
 - c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items which the contractor agreed to supply shall be borne and paid for by the contractor.
 - d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.
- 27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
 - b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.
- 28. INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number, release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.
- 32. NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.
- 36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**
- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
 - b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

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- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
- i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such goods or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- e) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
 - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii) The modification by the State of the equipment furnished hereunder or of the software; or
 - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights or trade secrets.
37. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.
38. **DISPUTES:**
- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
 - b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
 - c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
39. **STOP WORK:**
- a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this

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- clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i) Cancel the Stop Work Order; or
 - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
- i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
 - ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
40. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
41. **COVENANT AGAINST GRATUITIES:** The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
42. **NONDISCRIMINATION CLAUSE:**
- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7265.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.
43. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10295.
44. **ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
 - b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.
 - c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i) the assignee has not been injured thereby, or
 - ii) the assignee declines to file a court action for the cause of action.

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45. **DRUG-FREE WORKPLACE CERTIFICATION:** The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i) the dangers of drug abuse in the workplace;
 - ii) the person's or organization's policy of maintaining a drug-free workplace;
 - iii) any available counseling, rehabilitation and employee assistance programs; and,
 - iv) penalties that may be imposed upon employees for drug abuse violations.
 - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - i) will receive a copy of the company's drug-free policy statement; and,
 - ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.
46. **FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
47. **SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
 - b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
48. **RECYCLING:** Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.
49. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:
- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
50. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).
51. **UNION ACTIVITIES:** For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that: by submitting a signed offer, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:
- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
 - b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
 - c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
 - d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.
52. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
53. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

54. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the State.
55. **DOMESTIC PARTNERS:** Commencing on July 1, 2004, Contractor certifies that it is in compliance with the applicable provisions of PCC Section 10295.3 with regard to benefits for domestic partners.

ADDITIONAL CMAS TERMS AND CONDITIONS

56. **CMAS -- CONTRACTOR'S LICENSE REQUIREMENTS:** Contracts that include installation or the wording "Furnish and Install" require at the time of contract award that contractors possess a valid California State Contractor's License. If subcontractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for contract revocation.

57. **CMAS -- PUBLIC WORKS REQUIREMENTS
(LABOR/INSTALLATION):**

- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price. Forms shall be provided to the Contractor.
- b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.
- c) The Contractor hereby certifies by signing this Contract that:
- i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.
 - ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.
- d) Laws to be Observed
- i) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.

- ii) Worker's Compensation Insurance
The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.
- iii) Travel and Subsistence Payments
Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
- iv) Apprentices
Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.
- v) Payroll
The Contractor shall keep an accurate payroll record (showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in section 1776 of the California Labor Code.

58. **CMAS -- TERMINATION OF CMAS CONTRACT:**

- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.
- b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered terminated on the same date.
- c) Upon termination or other expiration of this Contract, each party will assist the other party in orderly termination of the

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

- Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
- d) Prior to the expiration of this Contract, this Contract may be terminated for the convenience of both parties by mutual consent.
- e) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.
59. **CMAS -- CONTRACT AMOUNT:** There is no guarantee of minimum purchase of Contractor's products or services by the State.
60. **CMAS -- DEBARMENT CERTIFICATION (FEDERALLY FUNDED SERVICE CONTRACTS OVER \$10,000):** When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
61. **CMAS -- PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT:** All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:
- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.
62. **CMAS -- CONFLICT OF INTEREST:**
- a) **Current State Employees (Public Contract Code Section 10410):**
- i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
- ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) **Former State Employees (Public Contract Code Section 10411):**
- i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.
- ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.
63. **CMAS -- SUBCONTRACTING REQUIREMENTS:** Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract/purchase order, and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all contractual, administrative, and technical requirements of the Contract/purchase order, as applicable.
64. **CMAS -- RENTAL AGREEMENTS:**
- The State does not agree to:
- Indemnify a contractor;
 - Assume responsibility for matters beyond its control;
 - Agree to make payments in advance;
 - Accept any other provision creating a contingent liability against the State; or
 - Agree to obtain insurance to protect the Contractor.
- The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.
- If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.
- Personal property taxes are not generally reimbursed when leasing equipment (SAM 8735).
65. **CMAS -- LEASE (Lease Smart™):** If an agency desires to lease through Lease Smart™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.
66. **CMAS -- QUARTERLY REPORTS:** Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each contract, as differentiated by alpha suffix.
67. **CMAS -- LIQUIDATED DAMAGES:** In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The

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**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

May 2005

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Procurement Division
707 Third Street, 2nd Floor, MS #2-202
West Sacramento, CA 95605-2811

April 21, 2010

Mr. Chuck Ripepi
The Garland Company, Inc.
3800 E. 91st Street
Cleveland, OH 44105

Subject: RENEWAL of The Garland Company, Inc.'s CMAS Contract

CMAS Contract No.: 4-01-56-0006A, Supplement No. 3
CMAS Contract Term: April 21, 2010 through April 30, 2015
Base GSA Schedule No.: GS-07F-0130K

The State of California accepts your firm's offer and renews the attached California Multiple Award Schedule (CMAS) contract for the term identified above. The contract has been awarded the same contract number as the original CMAS contract. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm. Prior approval is required from the State for all news releases regarding this contract.

It is your firm's responsibility to furnish, upon request, a copy of this CMAS contract to State and local government agencies. A complete CMAS contract includes the following: **1)** this acceptance letter, **2)** CMAS cover pages (which includes the signature page, ordering instructions and special provisions, Std. 204 Payee Data Record, and any attachments or exhibits as prepared by the CMAS Unit), **3)** CMAS terms and conditions, **4)** Federal GSA terms and conditions, and **5)** product/service listing and prices. The CMAS Unit strongly recommends that government agencies place orders with Contractors who provide ALL of the contract elements described above.

To manage this contract, Contractors are directed to the "CMAS Contract Management and Information Guide", which can be accessed at www.pd.dgs.ca.gov/cmas. This guide covers topics such as CMAS Quarterly Reports, amendments, extensions, renewals, Contractor's change of address or contact person, and company name change requests, etc.

It is the Contractor's responsibility to submit on a timely basis detailed CMAS Quarterly Reports (along with any applicable incentive fees).

**THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q2-2010 (APR-JUNE),
DUE BY JULY 15, 2010.**

A "Tool Kit" is available for your use in marketing your products and/or services to State and local government agencies. The Tool Kit can be accessed through the CMAS website at www.pd.dgs.ca.gov/cmas then select the Suppliers/Contractors link. The "Approved CMAS Contractor" logo is only available to CMAS contract holders for display at conferences or on other marketing material. A login and password is required to download the logo. At the prompt, enter the login: "cmassupplier" and the password: "cmas010194".

Should you have any questions regarding this contract, please contact me at 916/375-7438. Thank you for your continued cooperation and support of the CMAS Program.

WALTER W. SABORIO, Program Analyst
California Multiple Award Schedules Unit

Excellence in the Business of Government



Procurement Division
707 Third Street, 2nd Floor, MS #2-202
West Sacramento, CA 95605-2811

State of California
**MULTIPLE AWARD SCHEDULE
SUPPLEMENT NO. 3
The Garland Company, Inc.**

4-01-56-0006A -	Construction Flooring-Epoxy Construction Roofing-Material Solar-Power Equip
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(Above descriptions for marketing purposes only. Review contract for products/services available.)

CONTRACT NUMBER:	3-01-56-0006A
CMAS TERM DATES:	4/21/2010 through 4/30/2015
DISTRIBUTION:	STATEWIDE

THIS CONTRACT IS AVAILABLE FOR USE BY STATE OF CALIFORNIA AGENCIES, AND LOCAL GOVERNMENT AGENCIES IN CALIFORNIA.

NOTICE: Products and/or services on this CMAS contract may be available on a Mandatory Statewide Contract (formerly Strategically Sourced Contract). If this is the case, the use of this CMAS contract is restricted unless the State agency has an approved exemption pursuant to MM 05-11, and as further explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the website: <http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.htm>. This requirement is not applicable to local government entities.

The purpose of this supplement is to renew this contract through 4-30-15. In addition, this supplement replaces in its entirety The Garland Company, Inc.'s existing California Multiple Award Schedule (CMAS) that expires on 4-30-10. The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated January 2010, products and/or services and pricing are included herein. Please review these provisions carefully because they may have changed since issuance of your last contract.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Effective Date: **4/21/2010**

WALTER W. SABORIO, Program Analyst, California Multiple Award Schedules Unit

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 3**

AVAILABLE PRODUCTS AND/OR SERVICES

This contract provides for the purchase and warranty of roofing and flooring materials.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA #GS-07F-0130K (The Garland Company, Inc.) with a GSA term of 1/20/2010 through 1/19/2015. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

ISSUE PURCHASE ORDER TO:

Orders may be placed with The Garland Company, Inc. or with an Authorized Dealer as indicated below:

Orders placed with The Garland Company, Inc.**SUBMIT ORDERS TO:**

The Garland Company, Inc.
3800 E. 91st Street
Cleveland, OH 44105

Contact: Steve Rojek
Phone: 800/762-8225
Fax No.: 216/883-2055
E-mail: srojek@garlandind.com

Orders placed with an Authorized Dealer must be addressed as shown below, and payment must be made payable to the Authorized Dealer identified on the invoice as shown below.

SUBMIT ORDERS TO:

The Garland Company, Inc.
c/o DBS Design-Build Solutions, Inc.
3800 E. 91st Street
Cleveland, OH 44105

Contact: Steve Rojek
Phone: 800/762-8225 x 3634
Fax No.: 216/883-2055
E-mail: srojek@garlandind.com

For invoicing purposes, each State Accounting office must have a copy of the reseller's Payee Data Record (Std. 204) in order to process payment of the invoice. Agencies should forward a copy of the Std. 204 to their respective accounting office. Without the Std. 204, payment may be unnecessarily delayed.

AUTHORIZED RESELLERS ARE RESPONSIBLE FOR SENDING A COPY OF ALL PURCHASE ORDERS TO THE GARLAND COMPANY, INC. FOR CMAS QUARTERLY REPORTING REQUIREMENTS.**CALIFORNIA SELLER'S PERMIT**

The Garland Company, Inc's California Seller's Permit No. is 30651030. Prior to placing an order with this company, agencies should verify that this permit is still valid at the following website: www.boe.ca.gov.

When issuing an order to an authorized reseller listed on a CMAS contract, it is the agency's responsibility to ensure that the reseller holds a valid California Seller's Permit.

CONTRACT PRICES

The maximum prices allowed for the products and/or services available in this CMAS contract are those set forth in the base contract identified on page 2 of this contract.

In meeting their requirements of the Governor's Executive Order S-09-09, the ordering agency is encouraged to seek prices lower than those on this CMAS contract. When responding to an agency's Request for Offer (RFO), the contractor can offer lower prices to be competitive.

DARFUR CONTRACTING ACT

This contractor has certified compliance to the Darfur Contracting Act per PCC section 10475, et seq. See the attached certification from this contractor regarding this act.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Ordering departments executing purchases using ARRA funding must attach the ARRA Supplemental Terms and Conditions document to their individual RFOs and purchase documents. Departments are reminded that these terms and conditions supplement, but do not replace, standard State terms and conditions associated with this CMAS contract. The ARRA Supplemental Terms and Conditions can be accessed at www.pd.dgs.ca.gov.

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 3**

DELIVERY

30 days after receipt of order, or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

MAXIMUM ORDER LIMITS (Local Governments are Exempt)

The order limits for orders placed against CMAS contracts are as follows:

Information Technology Goods & Services:	\$500,000
Non-Information Technology Services:	\$250,000
Non-Information Technology Goods:	\$100,000

These transactions are subject to the following requirements:

- State agencies must solicit a minimum of 3 CMAS contractors including 1 small business and/or DVBE (if available) who are authorized to sell the needed products and/or services listed on the CMAS contract and document responses. This is not a bid transaction so small business preference, protest language, intents to award, evaluation criteria, advertising, etc. are not applicable.
- If less than 3 offers received, state agencies must document their files with the reasons why the other suppliers solicited did not respond with an offer.
- If only one source is known (competing offers cannot be obtained), the non-competitive bid (NCB) contract process must be followed. See the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, for NCB guidelines. Exceptions to NCB process are also addressed in MM 03-10.
- Evaluation and award may be based on best value, as applicable, and not restricted to lowest cost.
- For CMAS transactions under \$5,000 only one offer is required if the state agency can establish and document that the price is fair and reasonable.
- Orders for Information Technology Goods and Services exceeding \$250,000 require additional documentation. See the latest Management Memo (currently MM 03-10) for specific information on these additional requirements.

- Exemptions to the CMAS order limits are not allowed.
- Local governments set their own order limits, and are not bound by the above order limits and requirements.

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

The minimum dollar value of an order to be issued under this contract is \$100.00.

ORDERING PROCEDURES**1. Order Form**

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms). The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65: <http://www.osp.dgs.ca.gov/pdf/std065.pdf>

2. Purchase Orders

The agency is required to forward a copy of each purchase order to the Department of General Services (DGS), Procurement Division, Data Management, 707 Third Street, 2nd Floor, MS 203, West Sacramento, CA 95605-2811 (IMS# Z-1).

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals. See the CMAS Services Guide at www.dgs.ca.gov/pd (click on CMAS) for guidelines pertaining to all orders for services.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 3**

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see the Purchasing Authority Manual, Chapter 6.B4.1.

5. Amendments to Agency's Purchase Orders

Agency purchase orders cannot be amended if the base CMAS contract has expired.

Management Memo 03-10 provides the following direction regarding amendments to department purchase orders:

Orders for IT Goods & Services or Non-IT Goods:
Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment.

Orders for Non-IT Services:
Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed.

Also see the Purchasing Authority Manual, Chapter 8, Topic 7, for more information on amending purchase orders.

CONTRACTOR OWNERSHIP INFORMATION

The Garland Company, Inc. is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, state agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:

www.pd.dgs.ca.gov
(click on CMAS click on State Agencies)

In response to our commitment to increase participation by small businesses, the Department of General Services waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See the current fees in the DGS Price Book at:
<http://www.ofs.dgs.ca.gov/Price+Book/P/Purchasing.htm>

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and

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- Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

SERVICES EXCLUDED ON THE CMAS PROGRAM

The following services are not available on the CMAS Program:

1. Architectural, Construction, Engineering and Environmental Services

Services are not allowed on CMAS that are required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental services as defined in Government Code 4525. If you have questions about these types of transactions, the Department of General Services (DGS), Real Estate Services Division (RESD) can be contacted at 916/376-1752.

2. Legal Services

Contracting for legal services by state agencies is controlled by statutes (GC 11040) that require Attorney General approval prior to entering into contracts with outside counsel. Additionally, Article VII of the California Constitution requires that state legal work be performed by state employees, absent limited exceptions (Government Code 19130). There are also policy-based approval requirements for all Executive Branch agencies that control the use of private counsel.

3. Other Excluded Services

Also, services involving financial audits, facility planning, registered nursing, and security guards are not available on the CMAS Program.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

Contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.
2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.
3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the contract may not be identified as an NSP item.
4. Maximum Order Limitation: For orders \$250,000, or less, the total dollar value of all NSP items included in a purchase order shall not exceed \$5,000. For orders exceeding \$250,000, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or \$25,000 whichever is lower.
5. An NSP item included in an order issued against a contract is subject to all of the terms and conditions set forth in the contract.
6. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this contract:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.
2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.

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3. Items that do not meet the Productive Use Requirements for information technology products. (SAM Section 5203)
4. Any other item or class of items specifically excluded from the scope of this contract.
5. Public Works components NOT incidental to the overall project requirements.
6. Products or services the contractor is NOT factory authorized or otherwise certified or trained to provide.
7. Follow-on consultant services that were previously recommended or suggested by the same contractor.

The contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges, that is empowered to expend public funds. While the state makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
- A CMAS amendment is required for changes to contracts that require Prison Industry Authority (PIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the Federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's Federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. **THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES.** Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. **Notwithstanding this, there is no guarantee that "every" possible requirement that pertains to all the different and unique state processes has been included.**

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to all statewide procurement requirements in the Purchasing Authority Manual, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements of SAM Section 5203
- SAM Sections 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.

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- Pursuant to Public Contract Code Section 10359 state agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the CMAS contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires state agencies to prepare post evaluations on form Std. 4 for all completed non-IT consulting services contracts of more than \$5,000. Copies of negative evaluations for non-IT consulting services only must be sent to the DGS, Office of Legal Services. The Bureau of State Audits requires state agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are 1.5% - 10 days, net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each state accounting office must have a copy of the attached Payee Data Record (Std. 204) in order to process payment of invoices. Agencies should forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative Fee

Orders from State Agencies:

The Department of General Services (DGS) will bill each state agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This administrative fee is waived for CMAS purchase orders issued to California certified small businesses.

See the current administrative fees in the DGS Price Book at: <http://www.ofs.dgs.ca.gov/Price+Book/main.htm>, then select the link under the "Procurement Division" heading entitled "Purchasing".

Orders from Local Government Agencies:

Effective for CMAS orders dated 1/1/2010 or later, CMAS contractors, who are not California certified small businesses, are required to remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

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The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

The Garland Company, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders to suppliers not California certified as a small business.

7. Lease/Purchase Analysis

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd then click on GS \$Mart™. Buyers without Internet access may contact the GS \$Mart™ Administrator, Pat Mullen by phone at 916/375-4617 or via e-mail at pat.mullen@dgs.ca.gov for further information.

9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for only maintenance services (i.e. the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.
2. For contracts that provide for both maintenance services and consumable supply items (i.e. toner, developer, and staples, for example), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, state agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

The contractor will be required to itemize the consumables being taxed for state accounting purposes.

CONTRACTOR QUARTERLY REPORT PROCESS

Contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit. This report shall be mailed to:

Department of General Services
Procurement Division – CMAS Unit
Attention: Quarterly Report Processing
PO Box 989052, MS #2-202
West Sacramento, CA 95798-9052

Reports that include checks for incentive fees or that exceed 10 pages must be mailed and shall not be faxed or e-mailed. All other reports may be faxed or e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit Fax Number: (916) 375-4663
CMAS Unit E-Mail: cmas@dgs.ca.gov

For the full instructions on completing and submitting CMAS Quarterly Business Activity Reports, and a soft copy of a blank quarterly report form, go to <http://www.pd.dgs.ca.gov/cmas/supplierinfo.htm>, and then select the link entitled "Quarterly Report Information and Electronic Form". See Exhibit A attached to this contract showing a sample quarterly report form.

Important things to remember regarding CMAS Quarterly Business Activity Reports (referred to as "reports" below):

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- A report is required for each CMAS contract each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS contract.
- Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.
- Contractors must report the sales activity for all resellers listed on their CMAS contract.
- Any report that does not follow the required format or that excludes required information will be deemed incomplete and returned to the contractor for corrections.
- Taxes and freight must not be included in the report.
- For CMAS orders dated 1/1/2010 or later, contractors are no longer required to attach copies of purchase orders to their reports. This changed requirement will start on Q1-2010 reports, which are due 4/15/2010.
- For CMAS orders dated 1/1/2010 or later, contractors who are not California certified small businesses must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below). This new requirement will start on Q1-2010 reports, which are due 4/15/2010.
- New contracts, contract renewals or extensions, and contract modifications will be approved only if the contractor has submitted all required quarterly reports and incentive fees.

A local government agency is any city, county, district, or other local governmental body, including the California State University (CSU) and University of California (UC) systems, K-12 public schools and community colleges empowered to expend public funds.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- Payee Data Record (Std. 204).
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions (unless otherwise stipulated in the CMAS contract).
- Federal GSA products, services, and price list (unless otherwise stipulated in the CMAS contract).
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at, or below, contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED

When a subcontractor ultimately provides all of the products or performs all of the services that a contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a commercially useful function. It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

CMAS Quarterly Business Activity Reports are due in the CMAS Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to Mar 31	Due Apr 15
Quarter 2	Apr 1 to Jun 30	Due Jul 15
Quarter 3	Jul 1 to Sep 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

CONTRACTOR QUARTERLY INCENTIVE FEES

For CMAS orders dated 1/1/2010 or later, CMAS contractors who are not California certified small businesses must remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

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Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues.

For guidelines, see the CMAS Services Guide, Attachment B.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants, responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages must be included in the purchase order to be applicable, mutually agreed upon by agency and contractor, and cannot be a penalty.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Origin. Buying agency pays the freight charges.

State agencies (not local governments) must follow the instructions below for shipping charges exceeding \$50.00.

All shipments will be made by ground transportation unless otherwise ordered on the Std. 65.

Before placing order, contact the DGS Transportation Management 916/376-1888 to determine the routing of freight shipments. You will need to provide Transportation Management with the point of origin and destination. They will also want to know the commodity being shipped and the estimated shipping weight of the order. If shipping overnight, the account number must be included.

Routing information should be shown on the face of the Contract/Delegation Purchase Order (Std. 65) in the format shown below.

Shipping Instructions:
Supplier route via _____

Carrier's telephone number _____

Annotate bill(s) of lading as follows:
"Freight for account of State of California. Tender Number _____ applies. State of California
Purchase Order Number _____
SHIP FREIGHT COLLECT."
Estimated Freight charges: _____

If supplier is unable to use this carrier, call Transportation Management at 916/376-1888.

The following statement must be noted on the purchase order when the commodities are being shipped via UPS (United Parcel Service) and the State is paying directly to UPS (Collect).

Shipping Instructions:
Supplier route via United Parcel Service (surface), State of California, Department of _____
_____ UPS account number applies,
State of California Purchase Order Number _____
SHIP COLLECT;
Estimated UPS charges: _____

If supplier is unable to use UPS, call Transportation Management at 916/376-1888.

Contractor note: Additional shipping costs incurred by deviation to above shipping instructions, without Transportation Management approval, shall be charged to the contractor.

ATTACHMENT A
CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Instructions for completing the CMAS Quarterly Business Activity Report.

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Agency Billing Code** - Identify the State agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Billing codes are not applicable to Local Government agencies.
6. **Total Dollars Per PO** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
7. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
8. **Agency Address** - Identify the ordering agency's address on the purchase order.
9. **Phone Number** - Identify the phone number for the ordering agency's contact person.
10. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
11. **1% Remitted to DGS** - Identify 1% of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
12. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

- A report is required for each CMAS contract each quarter even when there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.

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ATTACHMENT B

ADA NOTICE

Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

STATE OF CALIFORNIA DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9)
 STD. 204 (Rev. 6-2003)

1	<p>INSTRUCTIONS: Complete all information on this form. Sign, date, and return to the State agency (department/office) address shown at the bottom of this page. Prompt return of this fully completed form will prevent delays when processing payments. Information provided in this form will be used by State agencies to prepare Information Returns (1099). See reverse side for more information and Privacy Statement.</p> <p>NOTE: Governmental entities, federal, State, and local (including school districts), are not required to submit this form.</p>											
2	<p>PAYEE'S LEGAL BUSINESS NAME (Type or Print) The Garland Company, Inc.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">SOLE PROPRIETOR - ENTER NAME AS SHOWN ON SSN (Last, First, M.I.)</td> <td>E-MAIL ADDRESS srojek@garlandind.com</td> </tr> <tr> <td>MAILING ADDRESS 3800 E. 91st Street</td> <td colspan="2">BUSINESS ADDRESS 3800 E. 91st Street</td> </tr> <tr> <td>CITY, STATE, ZIP CODE Cleveland, OH 44105</td> <td colspan="2">CITY, STATE, ZIP CODE Cleveland, OH 44105</td> </tr> </table>			SOLE PROPRIETOR - ENTER NAME AS SHOWN ON SSN (Last, First, M.I.)		E-MAIL ADDRESS srojek@garlandind.com	MAILING ADDRESS 3800 E. 91st Street	BUSINESS ADDRESS 3800 E. 91st Street		CITY, STATE, ZIP CODE Cleveland, OH 44105	CITY, STATE, ZIP CODE Cleveland, OH 44105	
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CMAS CONTRACT APPLICATION GUIDE

Darfur Contracting Act Certification Form

Pursuant to Public Contract Code section 10476, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a "scrutinized" company as defined in Public Contract Code section 10476. (See back for instructions.)

Therefore, to be eligible to submit a bid, proposal, or CMAS application, please insert your company name and Federal ID Number and complete only one of the following three paragraphs (via initials for Paragraph #1 or Paragraph #2, or via initials and certification for Paragraph #3):

The Garland Company, Inc. 34-1594088
Company/Vendor Name (Printed) Federal ID Number

Chuck Ripepi C.F.O.
Printed Name and Title of Person Initialing (for Options 1 or 2)

1. CR We do not currently have, or we have not had within the previous three years, business
Initials activities or other operations outside of the United States.

OR

2. We are a scrutinized company as defined in Public Contract Code section 10476, but we
Initials have received written permission from the Department of General Services (DGS) to
submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of
the written permission from DGS is included with our bid or proposal.

OR

3. We currently have, or we have had within the previous three years, business activities or
Initials & other operations outside of the United States, but we certify below that we are not a
Certification scrutinized company as defined in Public Contract Code section 10476.
Below

CERTIFICATION FOR #3

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder/applicant to the clause listed above in #3. This certification is made under the laws of the State of California.

Chuck Ripepi
By (Authorized Signature)

Chuck Ripepi C.F.O.
Printed Name and Title of Person Signing

3-15-2010 Cuyahoga, Ohio
Date Executed Executed in the County and State of

Note Regarding Change of Status - If your company has a change of status, with regard to this certification, during the term of your contract(s) then it is incumbent on your company to submit an updated Certification. For questions regarding a change of status, please contact the contract's designated State Contract Administrator.

STATE OF CALIFORNIA DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9)
 STD. 204 (Rev. 6-2003)

1	<p>INSTRUCTIONS: Complete all information on this form. Sign, date, and return to the State agency (department/office) address shown at the bottom of this page. Prompt return of this fully completed form will prevent delays when processing payments. Information provided in this form will be used by State agencies to prepare Information Returns (1099). See reverse side for more information and Privacy Statement.</p> <p>NOTE: Governmental entities, federal, State, and local (including school districts), are not required to submit this form.</p>								
2	<p>PAYEE'S LEGAL BUSINESS NAME (Type or Print) Design-Build Solutions, Inc.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">SOLE PROPRIETOR - ENTER NAME AS SHOWN ON SSN (Last, First, MI.)</td> <td style="width: 50%;">E-MAIL ADDRESS srojck@garlandind.com</td> </tr> <tr> <td>MAILING ADDRESS 3800 E. 91st Street</td> <td>BUSINESS ADDRESS 3800 E. 91st Street</td> </tr> <tr> <td>CITY, STATE, ZIP CODE Cleveland, OH 44105</td> <td>CITY, STATE, ZIP CODE Cleveland, OH 44105</td> </tr> </table>			SOLE PROPRIETOR - ENTER NAME AS SHOWN ON SSN (Last, First, MI.)	E-MAIL ADDRESS srojck@garlandind.com	MAILING ADDRESS 3800 E. 91st Street	BUSINESS ADDRESS 3800 E. 91st Street	CITY, STATE, ZIP CODE Cleveland, OH 44105	CITY, STATE, ZIP CODE Cleveland, OH 44105
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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
 - a) "Business entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - b) "Buyer" means the State's authorized contracting official.
 - c) "Contract" means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - d) "Contractor" means the Business Entity with whom the State enters into this contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - e) "Goods" (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
 - f) "State" means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
4. **SEVERABILITY:** The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
 - a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
 - b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
8. **CONTRACTOR'S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.
 - a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time, and
 - b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
9. **CMAS -- ASSIGNMENT:** This contract shall not be assignable by the contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

Should the State desire financing of the assets provided hereunder through GS \$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
11. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
 - a) these General Provisions -- Non-IT Commodities;
 - b) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
 - c) federal GSA (or other multiple award) terms and conditions;

January 2010

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GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

- d) statement of work, including any specifications incorporated by reference herein;
- e) special terms and conditions; and
- f) all other attachments incorporated in the contract by reference.
12. **PACKING AND SHIPMENT:**
- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
- show the number of the container and the total number of containers in the shipment; and
 - the number of the container in which the packing sheet has been enclosed.
- b) All shipments by contractor or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.
13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.
- Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.
 - If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
 - On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
14. **TIME IS OF THE ESSENCE:** Time is of the essence in this contract.
15. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.
16. **SUBSTITUTIONS:** Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.
17. **INSPECTION, ACCEPTANCE AND REJECTION:**
- Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.
 - All goods may be subject to inspection and test by the State or its authorized representatives.
 - Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
 - All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
 - The State shall give written notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such goods and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
18. **SAMPLES:**
- Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the contract.
 - Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.
19. **CMAS – WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.

January 2010

Page 2 of 10

GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.
- 20. SAFETY AND ACCIDENT PREVENTION:** In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.
- 21. INSURANCE:** When performing work on property in the care, custody or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the buyer, the contractor may be required to have the State shown as an "additional insured" on selected policies.
- 22. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.
- b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- 23. TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
- b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- i) Stop work as specified in the Notice of Termination.
 - ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
- 24. TERMINATION FOR DEFAULT:**
- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
- i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
 - ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
 - iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).
- b) The State's right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
- c) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d) If the contract is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
- i) Completed goods, and
 - ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be

January 2010

Page 3 of 10

GSPD-401Non-IT Commodities-CMAS

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

- necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.
- 25. FORCE MAJEURE:**
Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
b) Acts of the federal or state government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform.
- 26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items which the contractor agreed to supply shall be borne and paid for by the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.
- 27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made of installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.
- 28. INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number, release order number (if applicable), item number, unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.
- 32. NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent

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of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

35. **NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.
36. **PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**
- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
 - b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
 - d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such goods or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- e) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
 - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii) The modification by the State of the equipment furnished hereunder or of the software; or
 - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights or trade secrets.
37. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.
38. **DISPUTES:**
- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
 - b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure

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- to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
39. **STOP WORK:**
- a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i) Cancel the Stop Work Order; or
- ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
- i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
- ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
40. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
41. **COVENANT AGAINST GRATUITIES:** The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
42. **NONDISCRIMINATION CLAUSE:**
- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.
43. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
44. **ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with

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- Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- i) the assignee has not been injured thereby, or
 - ii) the assignee declines to file a court action for the cause of action.
45. **DRUG-FREE WORKPLACE CERTIFICATION:** The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i) the dangers of drug abuse in the workplace;
 - ii) the person's or organization's policy of maintaining a drug-free workplace;
 - iii) any available counseling, rehabilitation and employee assistance programs; and,
 - iv) penalties that may be imposed upon employees for drug abuse violations.
 - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - i) will receive a copy of the company's drug-free policy statement; and,
 - ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.
46. **FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
47. **SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov and Public Contract Code Section 6108.
 - b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
48. **RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
49. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:
- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
50. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
51. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
52. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise

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State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

53. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the State.
54. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code section 10295.3.

ADDITIONAL CMAS TERMS AND CONDITIONS

55. **CMAS -- CONTRACTOR'S LICENSE REQUIREMENTS:**
Contracts that include installation or the wording "Furnish and Install" require at the time of contract award that contractors possess a valid California State Contractor's License. If subcontractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for contract revocation.
56. **CMAS -- PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**
- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price. Forms shall be provided to the Contractor.
 - b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.
 - c) The Contractor hereby certifies by signing this Contract that:
 - i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.
 - ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the

provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.

d) **Laws to be Observed**

i) **Labor**

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.

ii) **Worker's Compensation Insurance**

The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.

iii) **Travel and Subsistence Payments**

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

iv) **Apprentices**

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.

v) **Payroll**

The Contractor shall keep an accurate payroll record /showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in section 1776 of the California Labor Code.

57. **CMAS -- TERMINATION OF CMAS CONTRACT:**

- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.

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- b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered terminated on the same date.
- c) Upon termination or other expiration of this Contract, each party will assist the other party in orderly termination of the Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
- d) Prior to the expiration of this Contract, this Contract may be terminated for the convenience of both parties by mutual consent.
- e) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.
58. **CMAS -- CONTRACT AMOUNT:** There is no guarantee of minimum purchase of Contractor's products or services by the State.
59. **CMAS -- DEBARMENT CERTIFICATION (FEDERALLY FUNDED CONTRACTS):** When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
60. **CMAS -- PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT:** All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:
- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.
61. **CMAS -- CONFLICT OF INTEREST:**
- a) Current State Employees (Public Contract Code Section 10410):
- i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
- ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) Former State Employees (Public Contract Code Section 10411):
- i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.
- ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.
62. **CMAS -- SUBCONTRACTING REQUIREMENTS:** Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract/purchase order, and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all contractual, administrative, and technical requirements of the Contract/purchase order, as applicable.
63. **CMAS -- RENTAL AGREEMENTS:**
- The State does not agree to:
- Indemnify a contractor;
 - Assume responsibility for matters beyond its control;
 - Agree to make payments in advance;
 - Accept any other provision creating a contingent liability against the State; or
 - Agree to obtain insurance to protect the Contractor.
- The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.
- If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.
- Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).
64. **CMAS -- LEASE (Lease \$Mart™):** If an agency desires to lease through Lease \$Mart™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.
65. **CMAS -- QUARTERLY REPORTS:** Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each contract, as differentiated by alpha suffix.
66. **CMAS -- LIQUIDATED DAMAGES:**

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**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

67. **CMAS -- PROGRESS PAYMENTS/PERFORMANCE BONDS:**
In accordance with PCC 10314: Any contract for goods to be manufactured by the Contractor specially for the State and not suitable for sale to others in the ordinary course of the Contractor's business may provide, on such terms and conditions as the department deems necessary to protect the State's interests, for progress payments for work performed and costs incurred at the Contractor's shop or plant, provided that not less than 10 percent of the Contract price is required to be withheld until final delivery and acceptance of the goods, and provided further, that the Contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the Contract securing the faithful performance of the Contract by the Contractor.

January 2010

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Procurement Division
707 Third Street, 2nd Floor, MS #2-202
West Sacramento, CA 95605-2811

State of California
MULTIPLE AWARD SCHEDULE
The Garland Company, Inc.

CONTRACT NUMBER:	4-01-56-0006A
SUPPLEMENT NO.:	4
CMAS CONTRACT TERM:	4/23/2015 through 4/30/2020
CONTRACT CATEGORY:	Non Information Technology Goods
APPLICABLE TERMS & CONDITIONS:	August 2010
MAXIMUM ORDER LIMIT:	\$100,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-07F-0130K
BASE SCHEDULE HOLDER:	The Garland Company, Inc.

This contract provides for the purchase and warranty of roofing and flooring materials. (See page 2 for restrictions applicable to this contract.)

NOTICE: Products and/or services on this CMAS may be available on a Mandatory Statewide Contracts. If this is the case, the use of this CMAS is restricted unless the State agency has an approved exemption as explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the website: <http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.htm>. This requirement is not applicable to local government entities.

The purpose of this supplement is to renew this contract through 4-30-20. In addition, this supplement replaces in its entirety The Garland Company, Inc's existing California Multiple Award Schedule (CMAS) that expires on 4-30-15. The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated August 2010 products and/or services and pricing are included herein. Please review these provisions carefully because they may have changed since issuance of your last contract.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Original Signature On File Effective Date: **4/23/2015**
YOLANDA TUTT, Program Analyst, California Multiple Award Schedules Unit

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

CMAS PRODUCT & SERVICE CODES

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS contract and the base contract identified below for the products and/or services available on this contract.

Construction Flooring-Epoxy
Construction Roofing-Material

AVAILABLE PRODUCTS AND/OR SERVICES

The ordering agency must verify all products and/or services are currently available on the base GSA schedule at the GSA eLibrary. Access the GSA eLibrary at www.gsaelibrary.gsa.gov.

EXCLUDED PRODUCTS AND/OR SERVICES

Installation services, and public works service with a requirement for State contractor licensing are not available under this contract.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA Schedule No. GS-07F-0130K (The Garland Company, Inc.) with a GSA term of 1/20/2015 through 1/19/2020. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address, or faxed to (216) 883-2055:

The Garland Company, Inc.
3800 E 91st Street
Cleveland, OH 44105
Attn: Steve Rojek

Agencies with questions regarding products and/or services may contact the contractor as follows:

Phone: (216) 430-3613
E-mail: srojek@garlandind.com

TOP 500 DELINQUENT TAXPAYERS

In accordance with Public Contract Code Section 10295.4, and prior to placing an order for non-IT goods and/or services, agencies must verify with the Franchise Tax Board and the Board of Equalization that this contractor's name does not appear on either list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code.

The Franchise Tax Board's list is available at www.ftb.ca.gov/about/FTB/Delinquent_Taxpayers.shtml.

The Board of Equalization's list is available at www.boe.ca.gov/cqi-bin/delig.cqi.

CALIFORNIA SELLER'S PERMIT

The Garland Company, Inc.'s California Seller's Permit No. is 30651030. Prior to placing an order with this company, agencies should verify that this permit is still valid at the following website: www.boe.ca.gov.

CONTRACT PRICES

The maximum prices allowed for the products and/or services available in this CMAS contract are those set forth in the base contract identified on page 2 of this contract.

The ordering agency is encouraged to seek prices lower than those on this CMAS contract. When responding to an agency's Request for Offer (RFO), the contractor can offer lower prices to be competitive.

DARFUR CONTRACTING ACT

This contractor has certified compliance to the Darfur Contracting Act per PCC section 10475, et seq.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Ordering departments executing purchases using ARRA funding must attach the ARRA Supplemental Terms and Conditions document to their individual RFOs and purchase documents. Departments are reminded that these terms and conditions supplement, but do not replace, standard State terms and conditions associated with this CMAS contract. The ARRA Supplemental Terms and Conditions can be accessed at www.documents.dqs.ca.gov/pd/poliproc/ARRATand%20C081009final.pdf.

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

DELIVERY

30 days after receipt of order, or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Origin. Buying agency pays the freight charges.

State agencies (not local governments) must follow the instructions below for shipping charges exceeding \$50.

All shipments will be made by ground transportation unless otherwise ordered on the Std. 65.

Before placing order, contact the DGS Transportation Management (916) 376-1888 to determine the routing of freight shipments. You will need to provide Transportation Management with the point of origin and destination. They will also want to know the commodity being shipped and the estimated shipping weight of the order. If shipping overnight, the account number must be included.

Routing information should be shown on the face of the Contract/Delegation Purchase Order (Std. 65) in the format shown below.

Shipping Instructions:

Supplier route via: _____
Carrier's telephone number: _____

Annotate bill(s) of lading as follows.

"Freight for account of State of California. Tender Number: _____ applies. State of California Purchase Order Number: _____ SHIP FREIGHT COLLECT." Estimated Freight charges: _____

If supplier is unable to use this carrier, call Transportation Management at (916) 376-1888.

The following statement must be noted on the purchase order when the commodities are being shipped via UPS (United Parcel Service) and the State is paying directly to UPS (Collect).

Shipping Instructions:

Supplier route via United Parcel Service (ground). State of California, Department of _____ UPS account number applies. State of California Purchase Order Number _____ SHIP COLLECT. Estimated UPS charges: _____

If supplier is unable to use UPS, call Transportation Management at (916) 376-1888.

Ordering Instructions and Special Provisions

Contractor Note: Additional shipping costs incurred by deviation to above shipping instructions, without Transportation Management approval, shall be charged to the contractor.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

HOW TO USE CMAS CONTRACTS

Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using CMAS contracts. The requirements for the following bullets are in the SCM, Volume 2, Chapter 6 (for non-IT) and the SCM, Volume 3, Chapter 6 (for IT):

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors at www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, select "Find a CMAS Contract".
- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed.
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Std. 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2 and 3, Chapter 3)
- This is not a bid transaction, so the small business preference, DVBE participation goals, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.
- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected contractor.
- For CMAS transactions under \$5,000 only one offer is required if the State agency can establish and document that the price is fair and reasonable.

Local governments set their own order limits, and are not bound by the order limits on the cover page of this contract.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (PCC § 10329).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

The minimum dollar value of an order to be issued under this contract is \$100.00.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing website. The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65:
<http://www.dgs.ca.gov/dgs/ProgramsServices/Form s/FMC/Search.aspx>

2. Purchase Orders

State and Local Government agencies are required to send a copy of each CMAS purchase order to:

Department of General Services
Procurement Division, Data Management Unit
PO Box 989052, MS #2-203
West Sacramento, CA 95798-9052
(or via Interagency Mail Service #Z-1)

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see the SCM, Volumes 2 & 3, Chapter 6 B4.1.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

5. Amendments to Agency's Purchase Orders

Agency purchase orders cannot be amended if the CMAS contract has expired.

The SCM, Volumes 2 & 3, Chapter 6.A5.0 provides the following direction regarding amendments to all types of CMAS purchase orders:

Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

Amendments unique to non-IT services are covered in the SCM, Volume 2, Chapter 6.B2.9 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity or time), it may be amended. This only applies to the first amendment. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed \$250,000. If the original contract did not have language permitting amendments, the NCB process must be followed.

Also, see the SCM, Volumes 2 & 3, Chapter 8, Topic 8, for more information on amending purchase orders.

CONTRACTOR OWNERSHIP INFORMATION

The Garland Company, Inc. is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, State agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners: www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx then select "Find a CMAS Contractor".

In response to our commitment to increase participation by small businesses, the Department of General Services waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See the current fees in the DGS Price Book at: <http://www.dgs.ca.gov/ofs/Pricebook.aspx>

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal, and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

SPECIAL MANUFACTURED GOODS

Any contract for goods to be manufactured by the contractor specifically for the State and not suitable for sale to others may require progress payments.

For Non-IT goods contracts, see the CMAS contract Non-IT Commodities Terms & Conditions, Provision 69, Progress Payments.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district, or other local governmental body or corporation, including LC, CSU, K-12 schools and community colleges empowered to expend public funds. While the State makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
- A CMAS amendment is required for changes to contracts that require California Prison Industry Authority (CALPIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's federal GSA, (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies, and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Nonetheless, there is no guarantee that every possible requirement that pertains to all the different and unique State processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to all statewide procurement requirements in the SCM, Volumes 2 and 3, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements, per the SCM, Volume 3, Chapter 2, Section 2 B6.2.
- SAM Sections 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 State agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, State and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the Contractor's Std. 204, Payee Data Record, to determine sole proprietorship. For inquiries regarding this subject, contact EDD at (916) 651-8945 for technical questions or (888) 745-3886 for information and forms.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires State agencies to prepare post evaluations on form Std. 4 for all completed non-IT consulting services contracts of more than \$5,000. Copies of negative evaluations for non-IT consulting services only must be sent to the DGS, Office of Legal Services. The Bureau of State Audits requires State agencies annually to certify compliance with these requirements.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

**ETHNICITY/RACE/GENDER REPORTING
REQUIREMENT**

Effective January 1, 2007, in accordance with Public Contract Code 10111, State agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are 1.5%-10 days, net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each State accounting office must have a copy of the Contractor's Payee Data Record (Std. 204) in order to process payment of invoices. Contractors are required to provide a copy of their Std. 204 upon request from an agency customer. Agencies should forward a copy of the Std. 204 to their accounting office. Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative and Incentive Fees

Orders from State Agencies:

The Department of General Services (DGS) will bill each State agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This administrative fee is waived for CMAS purchase orders issued to California certified small businesses.

See the current administrative fees in the DGS Price Book at:
<http://www.dgs.ca.gov/ofs/Pricebook.aspx>.

Orders from Local Government Agencies:

Effective for CMAS orders dated 1/1/2010 or later, CMAS contractors, who are not California certified small businesses, are required to remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

The Garland Company, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders to suppliers not California certified as a small business.

7. Lease/Purchase Analysis

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd/programs/statefinancialmarketplace.aspx. Buyers may contact the GS \$Mart™ Administrator, Patrick Mullen by phone at (916) 375-4817 or via e-mail at patrick.mullen@dgs.ca.gov for further information.

9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for maintenance services (i.e., the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.
2. For contracts that provide for maintenance services and consumable supply items (e.g., toner, developer, and staples), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, State agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

The contractor will be required to itemize the taxed consumables for State accounting purposes.

CONTRACTOR QUARTERLY REPORT PROCESS

Contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit. See Attachment B for a copy of this form and instructions.

This report shall be mailed to:

Department of General Services
Procurement Division – CMAS Unit
Attention: Quarterly Report Processing
PO Box 989052, MS #2-202
West Sacramento, CA 95798-9052

Reports that include checks for incentive fees or that exceed a total of 5 pages must be mailed and shall not be faxed or e-mailed. All other reports may be faxed or e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit Fax Number: (916) 375-4663
CMAS Unit E-Mail: cmas@dgs.ca.gov

For the full instructions on completing and submitting CMAS Quarterly Business Activity Reports, and a soft copy of a blank quarterly report form, go to www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, and then select "For Suppliers/Contractors".

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

Important things to remember regarding CMAS Quarterly Business Activity Reports (referred to as "reports" below):

- A report is required for each CMAS contract each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS contract.
- Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.
- Contractors must report the sales activity for all resellers listed on their CMAS contract.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the contractor for corrections.
- Taxes and freight must not be included in the report.
- For CMAS orders dated 1/1/2010 or later, contractors are no longer required to attach copies of purchase orders to their reports. This changed requirement will begin on Q1-2010 reports, which are due 4/15/2010.
- For CMAS orders dated 1/1/2010 or later, contractors who are not California certified small businesses must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below). This new requirement will start on Q1-2010 reports, which are due 4/15/2010.
- New contracts, contract renewals or extensions, and contract modifications will be approved only if the contractor has submitted all required quarterly reports and incentive fees.

CMAS Quarterly Business Activity Reports are due in the CMAS Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to Mar 31	Due Apr 15
Quarter 2	Apr 1 to Jun 30	Due Jul 15
Quarter 3	Jul 1 to Sep 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

CONTRACTOR QUARTERLY INCENTIVE FEES

CMAS contractors who are not California certified small businesses must remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

CMAS contractors cannot charge local government agencies an additional 1% charge on a separate line item to cover the incentive fee. The contractor must include the 1% incentive fee in the price of the products or services offered, and the line item prices must not exceed the applicable GSA prices.

A local government agency is any city, county, district, or other local governmental body, including the California State University (CSU) and University of California (UC) systems, K-12 public schools and community colleges empowered to expend public funds.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions (unless otherwise stipulated in the CMAS contract).
- Federal GSA products, services, and price list (unless otherwise stipulated in the CMAS contract).
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at or below contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4**

CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED

When a subcontractor ultimately provides all of the products or performs all of the services that a contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a Commercially Useful Function (CUF). It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues. See the attached CMAS Terms and Conditions, Conflict of Interest, for more information.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 28, 1988 Federal Register (pages 19160-19211).

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages cannot be a penalty, must be mutually agreed upon by agency and contractor and included in the purchase order to be applicable.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101, California Code of Regulations, Title 2, Title 22, California Government Code, Sections 11135, et seq.; and other federal and State laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment A for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor, MS 202
West Sacramento, CA 95605-2811

Phone # (916) 375-4363
Fax # (916) 375-4663

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4

ATTACHMENT A

ADA NOTICE

Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

**ATTACHMENT B
CMAS QUARTERLY BUSINESS ACTIVITY REPORT**

Contractor Name: _____
 Contract Number: _____
 For Questions Regarding This Report Contact:
 Name: _____
 Phone Number: _____
 E-mail: _____

Reporting Calendar Year: _____ Revision
 Reporting Quarter: Q1 (Jan-Mar)
 Q2 (Apr-Jun)
 Q3 (Jul-Sep)
 Q4 (Oct-Dec)
 Check Here if No New Orders for This Quarter

STATE AGENCY PURCHASES

State Agency Name	Purchase Order Number	Purchase Order Date	Agency Billing Code	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total State Agency Dollars Reported for Quarter: \$ _____

LOCAL GOVERNMENT AGENCY PURCHASES

Local Government Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total Local Government Agency Dollars for Quarter: \$ _____ 1% Remitted to DGS (does not apply to CA certified S/Bs): \$ _____

Total of State and Local Government Agency Dollars Reported for this Quarter: \$ _____

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Instructions for completing the CMAS Quarterly Business Activity Report

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Agency Billing Code** - Identify the State agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Billing codes are not applicable to Local Government agencies.
6. **Total Dollars Per PO** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
7. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
8. **Agency Address** - Identify the ordering agency's address on the purchase order.
9. **Phone Number** - Identify the phone number for the ordering agency's contact person.
10. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
11. **1% Remitted to DGS** - Identify 1% of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
12. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

- A report is required for each CMAS contract, each quarter, even when there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
THE GARLAND COMPANY, INC.
CMAS NO. 4-01-56-0006A, SUPPLEMENT NO. 4

Ordering Instructions and Special Provisions.

15

Exhibit "B.1."
Price Sheet



The Garland Company, Inc.
"Service is our Best Product"

Material Proposal

Date: 1.6.2021
Invoice #:
Customer ID:
Expiration: 6.30.2021

To: Tahoe Truckee Unified School District

Project: Kings Beach School

Representative	Job	Payment Terms	Bid Date
Justin Holliman	Roofing	Net 30 / 1.5% discount 10	2.25.2021

Size	Description	Unit Price	Quantity	Line Total
3 gallon pail	Green Lock Membrane Adhesive	\$ 342.00	380	\$ 129,960.00
3.5 gallon pail	Green Lock Flashing Adhesive	\$ 288.00	55	\$ 15,840.00
5 gallon pail	Pyramic Plus LD	\$ 382.00	252	\$ 96,264.00
75 sq ft roll	Stress Ply Plus FR Mineral	\$ 234.00	580	\$ 135,720.00
10 ounce tube	Tuff Stuff	\$ 16.00	30	\$ 480.00
150 sq ft roll	Stressbase 80	\$ 224.00	290	\$ 64,960.00
6" x 150' roll	Germesh (reinforcement)	\$ 65.00	6	\$ 390.00
3 gallon pail	KEE Lock Mastic	\$ 318.00	10	\$ 3,180.00
Each	Garland Labor and Material Warranty / No Charge	\$ -	1	\$ -
Each	Jobsite Inspections as specified / No Charge	\$ -	1	\$ -

Subtotal	\$ 446,794.00
Sales Tax @ 0.25%	0.06
Total	\$ 483,654.51
Estimated Freight	\$ 13,950.00
Total	\$ 497,604.51

Thank you for your Business!

The Garland Company, Inc. Phone: 530-965-0884 Email: jholliman@garlandinc.com

OWNER FURNISHED PRODUCTS

PART 1 - GENERAL

1.1 SUMMARY

- A. **DESCRIPTION:** The Owner shall procure and provide certain products for installation as shown and specified per Contract Documents.
- B. **RELATED WORK SPECIFIED ELSEWHERE:**
 - 1. **General:** Products furnished and paid for by the Owner are described in the following technical sections and /or in the Drawings.
 - 2. **Owner SUPPLIED MATERIAL**
Note that this project includes the installation of owner-supplied material; the Owner has acquired roofing material through the CMAS program.

1.2 DEFINITIONS

- A. **GENERAL:** The following are used to identify products as noted on the Drawings.
- B. **OWNER FURNISHED CONTRACTOR INSTALLED (O.F.C.I.):** Products or equipment furnished by the Owner for installation under this contract.
- C. **OWNER FURNISHED OWNER INSTALLED (O.F.O.I.):** Products or equipment to be provided and installed by the Owner, but requiring surfacing, backing, utility connections or other preparation under this contract, for proper installation.
- D. **NOT IN CONTRACT (N.I.C.):** Products or equipment to be provided and installed by Owner, not requiring surfacing, backing, utility connections or other preparation under this contract.

PART 2 - PRODUCTS

2.1 PRODUCTS

- A. **ROOFING MATERIAL FURNISHED BY OWNER (O.F.C.I.):** Owner supplied material through the CMAS program. Related specification sections include;
Section 075200 Modified Bituminous Membrane Roofing
Section 076200 Sheet Metal Flashing and Trim
- B. **MATERIAL LIST**
Listed in a Table below is a list of Owner provided material. Any material or accessories required for the installation of the roof system in excess of the Owner provided material must be supplied by the Contractor. It is up to the Contractor to determine the precise amount of material required for the completion of this project, and to provide excess material, as required.

TABLE OF ROOFING MATERIAL OWNER FURNISHED CONTRACTOR INSTALLED (O.F.C.I)

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT
2021 KINGS BEACH ELEM SCHOOL REROOF PROJECT

Owner Furnished Products
Section 01 54 00

Material	Product Name	Product Code	Quantity Supplied by County	Coverage
Kings Beach Elem				
Base Sheet	Stress Base 80	4411-80	290 rolls	150 sq. ft/roll
Mineral Cap Sheet	StressPly Plus FR Min	4377	580 rolls	75 sq. ft/roll
Membrane Adhesive	Green-Loc NO VOC	7301--5	380 (5 gal buckets)	IP: 2.0 gals/sq. CAP: 2.5 gals/sq
Flashing Adhesive	Green-Loc Flashing	7302-3	55 (3.5 gal buckets)	
Caulking/Sealant	Tuff-Stuff	2130WHT	30 – 10 Oz tubes	20 feet
Mastic	KEE Lock	7303-3	10 (3 gal buckets)	
Reinforcement fabric	GarMesh 6	4840-6	6 rolls	6"x150' each
Coating	Pyramic Plus LO	7475-5U	252 (5 gal buckets)	1.5 gal/sq. per coat 2 coats required

PART 3 - EXECUTION

2.2 OWNER'S RESPONSIBILITIES

- A. **SUBMITTALS:** Arrange for and deliver necessary shop drawings, product data and samples to Contractor.
- B. **DELIVERY:**
 - 1. **General:** Arrange and pay for product delivery to site, in accordance with construction schedule.
 - 2. **Bill of Materials:** Deliver supplier's documentation to Contractor.
 - 3. **Inspection:** Inspect jointly with Contractor.
 - 4. **Claims:** Submit for transportation damage and replacement of otherwise damaged, defective, or missing items.
- C. **GUARANTEES:** Arrange for manufacturer's warranties, bonds, service, and inspections, as required.

2.3 CONTRACTOR'S RESPONSIBILITIES

- A. **SUBMITTALS:** Review shop drawings, product data and samples with notification of any discrepancies or problems anticipated in use of product.

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT	OWNER-FURNISHED PRODUCT
2021 KINGS BEACH ELEMENTARY SCHOOL REROOF PROJECT	DOCUMENT 01 64 00

OWNER FURNISHED PRODUCTS SECTION 01640

Page 3

B. **DELIVERY:**

1. **General:** Designate delivery date for each product in Progress Schedule.
2. **Receiving:** Receive and unload products at site. Handle products at site, including uncrating and storage.
3. **Inspection:** Promptly inspect products jointly with Owner; record shortages, damaged or defective items.
4. **Storage:** Protect products from damage or exposure to elements.

C. **INSTALLATION:**

1. **General:** Assemble, install, connect, adjust and finish products, as stipulated in the respective section of Specifications.
2. **Repair and Replacement:** Items damaged during handling and installation.

* End Section *

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT.
2021 KINGS BEACH ELEM SCHOOL REROOF PROJECT

OWNER-FURNISHED PRODUCTS
DOCUMENT 01 64 00

Exhibit "B.2."
Warranty

1.11 WARRANTY

- A. Upon completion of the work, provide the Manufacturer's written and signed Warranty, warranting that, if a leak develops in the roof during the term of this warranty, due either to defective material or defective workmanship by the installing contractor, the manufacturer shall provide the Owner, at the Manufacturer's expense, with the labor and material necessary to return the defective area to a watertight condition.
 - 1. Warranty Period:
 - a. 30 years from date of acceptance.
 - b. Contractor 2-year warranty

Warranty No: _____ Effective Date: _____

The Garland Company, Inc.®
Ten (10) Year High-Performance Roof System Restoration Limited Warranty

Owner Name: SAMPLE COPY Contractor Name: _____
 Address: _____ Address: _____
 City: _____ State/Zip: _____ City: _____ State/Zip: _____
 Building Name: _____ Products: _____
 Roof ID: _____ Square Footage: _____

MANUFACTURER RESPONSIBILITIES

The Garland Company, Inc. (hereinafter referred to as "Garland"), a Corporation of the State of Ohio, warrants to the above named Owner that the Garland roof system will not leak due to manufacturing defects. Subject to receipt of proper notice as set forth below and the terms of this Warranty, Garland will pay all authorized costs of repairs to the roofing system necessary to stop any leaks caused by defective materials that occur within ten (10) years from the final completion date. In the event repairs to correct leaks caused by defective materials require removal and replacement of the roof system in recover applications, Owner will be responsible for costs associated with the removal and replacement of the original roof system. Garland's obligation for repair remedies under this Warranty shall in no event exceed the cost of the original materials of this project.

APPLICABILITY OF WARRANTY

In order for this Warranty to remain in effect, all repairs, changes, alterations, modifications and/or additions to the roofing system must be authorized in advance in writing by Garland. This Warranty is transferable, subject to Garland's approval of the payment of the transfer fee and applicable maintenance required. This Warranty shall not be applicable if, in the sole judgment of Garland, any of the following shall occur:

- A. The roofing system is damaged by natural disasters including, but not limited to, fire, floods, lightning, hail, earthquakes, wind damage.
- B. The roofing system is damaged by structural movement or failure or movement of any material underlying the roofing system or base flashing.
- C. The roofing system is damaged by acts of negligence, misuse or accidents including, but not limited to, use of roof for other than waterproofing the building, vandalism, civil disobedience or acts of war.
- D. Damage to the roofing system resulting from:
 - 1. Infiltration or condensation of moisture in, through, or around walls, copings, building structure or underlying or surrounding areas.
 - 2. Ponding water, defined as standing water 48 hours after rainfall
 - 3. Chemical contaminate attacks on the roofing system which have not been approved or accepted by Garland.
 - 4. Defects in engineering or building design or construction.
 - 5. Traffic or storage of materials on roof.
 - 6. Defects in, failure or improper application of the underlying structural material used as a base upon which the roof is applied.
- E. Failure of Owner to properly notify Garland in writing and receive written approval of:
 - 1. Changes in the usage of the building.
 - 2. Modifications or additions to the roofing system.
- F. Failure of Owner to properly maintain the roof according to the High-Performance Roof Care & Maintenance Guide.
- G. Failure of Owner to provide Garland with timely written notice of a claim pursuant to the terms of this Warranty.

LIMITATIONS/EXCLUSIONS

Garland shall not be responsible for damages that occur to real or personal property as a result of leaks, including damage to the structure itself or contents therein. Instead, Garland's sole responsibility pursuant to this Warranty is for costs associated with repairs of leaks caused by defective materials set forth above. Garland shall not be liable for any discoloration, cosmetic deterioration or change in the visual appearance of the roofing system or Garland's top coating, or the removal or replacement of any roof top equipment or systems to perform any repairs. Furthermore, Garland shall not be responsible for any incidental or consequential damages caused by leaks in the original roof system, including, but not limited to, loss of use or profits.

EXCEPT AS SET FORTH HEREIN, GARLAND MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

OWNER RESPONSIBILITIES

In the event of a leak, Owner shall provide written notice to Garland within seven (7) days of discovery of the leak and before any repairs are undertaken. The written notice shall be sent to 3800 East 91st Street, Cleveland, OH 44105. Owner, or its agent or representatives shall then provide Garland with adequate access to allow Garland to inspect the leak and roofing system. If it is determined that the roof leak is the direct result of defective materials, Garland will perform the repairs required to correct the roof leaks at no cost to Owner. If Garland fails to have the repairs performed within 72 hours after its inspection, emergency temporary repairs performed by others will not void this Warranty, as long as those repairs are approved by Garland.

To the fullest extent allowed by law, this Warranty shall be construed under and in accordance with the laws of the State of Ohio and any actions or suits to enforce this Warranty shall be brought in the State of Ohio. This Warranty constitutes the sole and exclusive Warranty of the parties hereto and supersedes any prior understandings or written or oral agreements or warranties between the parties respecting the subject matter within. In the event that any one or more of the provisions contained in this Warranty shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Warranty shall be construed as if the invalid, illegal or unenforceable provision had never been contained therein.

WARRANTY CONTINUATION

In the fifth (5) year of the Warranty period, Owner must request an inspection of the roof system any time between the sixth and tenth months of the year to determine the appropriate maintenance and surface treatment required for continuation of the Warranty. Upon receipt of such request, Garland will perform an inspection of the roofing system to determine whether any repairs or surface coatings are required to make the roof system eligible for continuation of this Warranty. After such inspection, Garland will submit a detailed inspection report to Owner that identifies the nature and extent of any such repairs and/or surface coatings over the field of the roof required to maintain this Warranty. After the Owner has coated the roof and/or caused any required repairs to be made (at its sole expense and by a contractor approved by Garland) and notifies Garland of the same in writing, this Warranty will remain effective for the remaining 5 years.

WARRANTY ACCEPTANCE: Owner hereby accepts and agrees to the terms and conditions set forth in this Warranty.

The Garland Company, Inc. | 3800 East 91st Street | Cleveland, Ohio 44105

Exhibit "C"
Form of Payment Bond
Vendor's Labor & Material Bond
(100% Of Contract Price)

(Note: Vendor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of **Tahoe Truckee Unified School District** ("District") and **The Garland Company, Inc.** ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Roofing Material

("Project" or "Contract") which Contract dated _____, 2021, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars (\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of its subcontractors, or their heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 2021.

_____ Principal	_____ Surety
_____ By	_____ By
	_____ Name of California Agent of Surety
	_____ Address of California Agent of Surety
	_____ Telephone No. of California Agent of Surety

Vendor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

**Form of Performance Bond
(100% of Contract Price)**

(Note: Vendor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of **Tahoe Truckee Unified School District** ("District") and **The Garland Company, Inc.** ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Roofing Material

("Project" or "Contract") which Contract dated _____, 2021, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of _____ Dollars (\$_____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Promptly perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the work required to complete the Project.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Contract and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. District shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason.

The condition of the obligation is such that, if the above bound Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees,

officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond. The Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond by any overpayment or underpayment by the District that is based upon estimates approved by the Architect. The Surety does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 2021.

Principal Surety

By By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone No. of California Agent of Surety

Vendor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT