

**National Association of State Auditors, Comptrollers and Treasurers  
2401 Regency Road, Suite 302  
Lexington, Kentucky 40503-2419**

**REQUEST FOR PROPOSALS  
RFP NO. 05-01**

**PROJECT TITLE: Baseline Measurement and Benchmark Comparisons of State Agency Business Processes**

**PROPOSAL DUE DATE: June 1, 2005**

**EXPECTED TIME PERIOD FOR CONTRACT AND RENEWALS: July 2005 – June 2011**

**PROPOSER ELIGIBILITY: This procurement is open to those proposers that satisfy the minimum qualifications stated herein and that are available for work in the United States.**

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# 1. INTRODUCTION

## 1.1 PURPOSE AND BACKGROUND

The National Association of State Auditors, Comptrollers and Treasurers (NASACT) is initiating this Request for Proposals (RFP) to solicit proposals from Proposers qualified to provide to the Office of Comptroller or equivalent (Comptroller) in such state governments of the United States (including the District of Columbia) that participate in this RFP:

1. A proven process and toolset to establish high-level baseline measurements of state agencies' human resource and financial business processes. A representative sample of state agencies for the human resources baseline and the finance baseline will comprise the scope of the baseline measurements for each contracting state. To ensure efficient coordination within and between agencies, NASACT requires the measurement process to be essentially the same for both human resource and financial business processes.
2. For each contracting state, a comparison of the results of the baseline measures against established benchmarks for government, state government and private sector human resource and financial processes, and recognized best practices.

Results from the baseline measures and benchmark comparisons will be used to identify in each contracting state:

- Current human resource and financial business processes that are overly complex or cumbersome.
  - Missing or inadequate functionality in statewide information systems that support the human resource and financial business processes.
  - Best practices in human resource management and financial management processes from the public or private sector.
  - A means to make quantifiable assessments over time of the success of systems and process improvements.
3. For each contracting state, a report and presentation to the Comptroller that includes the results of the baseline measurements, benchmark comparisons, and a prioritized list of recommendations to assist the state in achieving the results listed above for the state level and the state agency level. NASACT shall also be provided a copy of this report.
  4. An evaluation tool that will be distributed to all state participants in a benchmarking project under the contract resulting from this RFP. This tool will be used to evaluate the content and procedures of the state's benchmarking project in order to improve subsequent benchmarking projects under the contract as appropriate.
  5. Follow-up measurements and benchmark comparisons of human resource and financial business processes, as determined by each contracting state.

### Proposed Schedule

- 2005 Baseline Measure and Benchmark Comparison – NASACT prefers that the initial contracting states have completed the first baseline measurement and benchmark comparison by November 2005. In addition, NASACT prefers that each state contract be completed within five (5) months of the signing of the contract. If a state contracts for measurement of both its human resources and financial business processes, the option of doing the two projects sequentially instead of simultaneously will be offered. Each segment should be completed within 5 months.
- Each contracting state will be allowed the option of a re-assessment of the human resource and financial business processes to measure improvements resulting from the initial benchmarking study and to identify opportunities for further improvements. This option may

be used after the state government has done process re-engineering or implemented a new ERP or other system.

- Contract extensions and/or renewals, will be available at the contracting state's option, to perform additional follow-up measurements.

The Proposer must propose a plan and approach for the project that demonstrates a good fit for the various state governments that are interesting in participating in this RFP and the willingness to work with the participating states to ensure the process can be tailored for state government. NASACT expects any tailoring to be a shared process between the Proposer, NASACT and the contracting states.

### **Governance**

For purposes of this contract, NASACT will be considered the customer of record. During the implementation of the contract, the contracting state will be responsible for managing the process of collecting the data for the baseline measures chosen for its project.

### **Background**

State Comptrollers are working together to implement a project that will assist them in assessing finance-related processes in their states and comparing their performance with other states. In addition to the assessment of each state's processes, the group wishes to have created a database of states' government metrics with which each state may compare its performance as a whole and the performance of its individual agencies. The time is right for a benchmarking project for two reasons:

- Some states anticipate implementing new financial management and/or human resource systems. Attaining a thorough understanding of their current practices and procedures and the efficiencies or lack thereof of current practice will assist them in re-engineering business process to reap maximum benefits of their new financial management and/or human resource systems. In addition, a benchmarking study now will provide baseline and ongoing benchmarks to measure the effectiveness of the new systems.
- State agencies are interested in adopting best practices that rely on state-of-the-art accounting, reporting and information systems to help focus on their core competencies and missions. Measuring current financial business and/or human resource processes and comparing the results to industry best practices will identify the highest priority areas for continued improvement.

NASACT has agreed to issue this RFP, which will result in a contract that can be used by as many state governments as are interested under a cooperative purchasing agreement.

## **1.2 OBJECTIVE**

Determining the baselines for key administrative processes will provide current performance metrics and the ability to measure on-going improvements in existing financial business functions and human resource rules and processes. In addition, comparing these business processes and services with world-class trends and emerging best practices will provide contracting states with timely and helpful advice on steps that can be taken to achieve both quick hits and long-term improvements in their states' back office business processes.

## **1.3 MINIMUM QUALIFICATIONS**

The minimum qualifications herein are to ensure Proposers have adequate experience and are up-to-date on the latest technologies related to conducting performance measures of human resource and financial business functions and services.

1. Before a contract pursuant to this RFP is signed, the apparent successful Proposer must hold all necessary, applicable business and professional licenses. NASACT may require any or all Proposers to submit evidence of proper licensure.
2. The Proposer must have five (5) recent years of experience in the development and analysis of performance measures and maintaining a benchmark of human resource and financial business processes and functions within the private sector.
3. The Proposer must have three (3) recent years of experience in the development and analysis of performance measures and maintaining a benchmark of human resource and financial business processes and functions within the public sector.
4. The Proposer must be able to provide at least three (3) past customer references where they have provided similar public sector human resource and financial performance measures and benchmark analyses. These customer references must be for work completed within the past five (5) years.
5. The Proposer must provide the following documentation of financial responsibility and stability:
  - A. EITHER the three documents below:
    1. a current written bank reference, in the form of a standard business letter, indicating that the Proposer's business relationship with the financial institution is in positive standing.
    2. two current written, positive credit references, in the form of standard business letters, from vendors with which the Proposer has done business or, documentation of a positive credit rating determined by an accredited credit bureau within the last 6 months.
    3. a letter of commitment from a financial institution (signed by an authorized agent of the financial institution and detailing the Proposer's name) for a general line of credit in the amount of Five Hundred Thousand Dollars (\$500,000.00).
  - B. OR the Proposer's most recent audited financial statements.

#### **1.4 FUNDING**

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

#### **1.5 PERIOD OF PERFORMANCE**

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin upon execution of the contract. The contract will be a three-year contract with options for three one-year renewals. This section is subject to amendment for projects that get started late. Amendments extending the period of performance, if any, shall be at the sole discretion of NASACT and the contracting states.

#### **1.6 DEFINITIONS**

Definitions for the purposes of this RFP include:

**Back office** – Internal administrative processes and systems state agencies use to operate.

**Comptroller** – The officer in each state and the District of Columbia who performs the functions of a comptroller, among which are preparing and authorizing disbursements, maintaining accounting records, preparing internal and external financial reports, and advising other officers

and agencies of the government about financial matters. For each project, the Comptroller will be the primary contact with the Contractor.

**Contracting state** – a state government that has contracted with NASACT to use this RFP to obtain baseline measures and benchmark comparisons for human resource and/or business processes.

**Contractor** – Individual or company whose proposal has been accepted by NASACT and who is eligible to enter into a fully executed, written contract with NASACT.

**Proposal** – A formal offer submitted in response to this solicitation.

**Proposer** – Individual or company submitting a proposal in order to attain a contract with NASACT.

**Request for Proposals (RFP)** – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

## 2. GENERAL INFORMATION FOR PROPOSERS

### 2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact at NASACT for this procurement. All communication between the Proposer and NASACT upon receipt of this RFP shall be with the RFP Coordinator, as follows:

Name	Patricia A. O'Connor
Office	National Association of State Auditors, Comptrollers and Treasurers
Physical Location	2401 Regency Road, Suite 302
City, State, Zip Code	Lexington, KY 40503-2914
Phone Number	859-276-1147
Fax Number	859-278-0507
E-Mail Address	poconnor@nasact.org

Any other communication will be considered unofficial and non-binding on NASACT. Proposers are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Proposer.

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Request for Proposals posted on NASACT's Web site	April 29, 2005
Written Questions Deadline for Submission	May 13, 2005, 1:00 p.m. EDT
Responses to Written Questions	By May 20, 2005
Issue addendum to RFP, if necessary	May 20, 2005
Proposals due	June 1, 2005, 4:30 p.m. EDT
Evaluate proposals	June 2 – 6, 2005
Conduct oral interviews with finalists, if required	June 7– 10, 2005
Announce "Apparent Successful Contractor" and send notification via fax or e-mail to unsuccessful proposers	June 15, 2005
Negotiate contract	June 16– June 30, 2005
Begin contract work	On or about July 1, 2005

NASACT reserves the right to revise the above schedule.

### 2.3 SUBMISSION OF PROPOSALS

Proposers may submit their proposals to the RFP Coordinator on a CD or by hard copy. If hard copy proposals are submitted to the RFP Coordinator, Proposers are required to submit six (6) copies of their proposals. If proposals are submitted to the RFP Coordinator on a CD, Proposers are required to use Word or PDF. The proposal, whether mailed or hand delivered, must arrive at NASACT no later than 4:30 p.m., EDT, on Wednesday, June 1, 2005.

Proposals are to be sent to the RFP Coordinator at the address noted in Section 2.1. Envelopes should be clearly marked to the attention of the RFP Coordinator.

Proposers mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Proposers assume the risk for the method of delivery chosen. NASACT assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using facsimile transmission.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of NASACT and will not be returned.

## **2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Materials submitted in response to this competitive procurement shall become the property of NASACT.

All proposals received shall remain confidential until the contract, if any resulting from this RFP, is signed by the Executive Director of NASACT and the apparent successful Contractor; thereafter, the proposals shall be deemed public records.

Any information in the proposal that the Proposer desires to claim as proprietary and exempt from disclosure must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Proposer is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

NASACT will consider a Proposer's request for exemption from disclosure. Marking the entire proposal exempt from disclosure will not be honored. The Proposer must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping copies of proposals. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

## **2.5 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided to all who receive the RFP. For this purpose, the published questions and answers from the pre-proposal conference and any other pertinent information shall be provided as an addendum to the RFP.

NASACT also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

## **2.6 ACCEPTANCE PERIOD**

Proposals must provide 60 days for acceptance by NASACT from the due date for receipt of proposals.

## **2.7 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Proposer is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

NASACT also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

## **2.8 CONTRACT AND GENERAL TERMS & CONDITIONS**

The apparent successful contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Proposer to submit its own standard contract terms and conditions in response to this solicitation. The Proposer may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. NASACT will review requested exceptions and accept or reject the same at its sole discretion.



The Proposer should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Proposer's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to NASACT.

## **2.9 COSTS TO PROPOSE**

NASACT will not be liable for any costs incurred by the Proposer in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

## **2.10 NO OBLIGATION TO CONTRACT**

This RFP does not obligate NASACT to contract for services specified herein.

## **2.11 REJECTION OF PROPOSALS**

NASACT reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

## **2.12 COMMITMENT OF FUNDS**

1. The Executive Director of NASACT is the only individual who may legally commit NASACT to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.
2. Most state participants will fund benchmarking projects through legislatively appropriated funds that are available for expenditure on a state fiscal year basis. Therefore, all projects will be commissioned subject to the availability of sufficient appropriated or other available funding for the projects.
3. Interested states will contact NASACT (the contract manager) when available funds are anticipated to coordinate a benchmarking project with the contractor. Once the state participant, NASACT and the contractor have agreed to the details of performance and cost, the parties will execute a confirmation of the project.
4. NASACT will submit an invoice to the contracting state for the anticipated fiscal year cost of the project, or other amount as negotiated, that will be remitted to NASACT for payment of invoices for the designated project. NASACT will account for each contracting state's funds separately and segregate the funds either through separate accounts or appropriate accounting methods to ensure that funds are not co-mingled and can be separately accounted for. If funds are not paid to NASACT at the beginning of the project, or funding type restricts payments to cost reimbursement (such as capital funds which can not be spent until an obligation is incurred and requires payment) the participating state will encumber or otherwise set aside funding for NASACT for the agreed amount of the project for that fiscal year to ensure available funds when invoices become due.
5. If the anticipated costs of the project in any fiscal year are expected to be substantially less than projected, NASACT and the contracting state will agree to the amount of funds to be returned to the state. If the anticipated costs of the project in any fiscal year are expected to be substantially more than projected, the contracting state may not authorize contractor performance or the incurring of obligations in excess of its original project confirmation without prior written approval or an amended confirmation signed by NASACT and the contracting state confirming funding availability.
6. As project thresholds or deliverables are completed by the contractor and accepted by the contracting state, the contractor will invoice NASACT for the allowable costs. Each invoice must

first be approved by the contracting state on the invoice or an attached confirmation of acceptance of the deliverables invoiced. NASACT will pay approved invoices within thirty (30) days or earlier if the Contractor offers a prompt pay discount for early payment. NASACT will provide reports of payments to participating states. Both the Contractor and contracting states will provide ongoing progress reports of projects as requested by NASACT.

## **2.13 INSURANCE COVERAGE**

The Contractor is to furnish NASACT with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to NASACT within fifteen (15) days of the contract effective date.

### **Liability Insurance**

- 1) Commercial General Liability Insurance (CGL): Contractor shall maintain general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the “each occurrence” limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the “each occurrence” limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured’s (cross liability) condition.
- 2) The Contractor will provide a copy of a valid certificate of insurance indicating liability insurance in the amount of at least \$1,000,000.
- 3) Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- 4) Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of “Any Auto.” Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

**Employers Liability (“Stop Gap”) Insurance:** In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

### **Worker’s Compensation Coverage**

The Contractor will at all times comply with all applicable workers’ compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. NASACT will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

### 3. PROPOSAL CONTENTS

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper with tabs separating the major sections of the proposal or may be submitted on CD (see Section 2.3, Submission of Proposals). The five major sections of the proposal are to be submitted in the order noted below:

- 1) Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP);
- 2) Technical Proposal;
- 3) Management Proposal;
- 4) Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Proposer in preparing a thorough response.

#### 3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Proposer to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Proposer and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Proposer (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number.

#### 3.2 TECHNICAL PROPOSAL (SCORED)

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Proposer's proposed approach and methodology for the project, including the data-collection technique(s) and analysis approach. The discussion of the methodology must include how the 2005 baseline measure and possible follow-up measures will evaluate quantifiable and non-quantifiable factors that affect performance and costs.

If the Proposer is proposing creative modifications to its standard approach to ensure a good fit for government, describe how NASACT and the contracting states will be involved in the tailoring of the standard approach.

This section should convey the Proposer's understanding of the proposed project.

This section should include the survey tool to obtain feedback from participants in benchmarking projects about, but not limited to, the clarity of instruction about the objective of the project, the usefulness of definitions provided with the data-collection tool, and the response of the Contractor to questions and problems during the data-collection process.

- B. Work Plan** - Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Proposer's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of NASACT and contracting states' staff.
- C. Project Schedule** - Include a sample project schedule for a single state project, indicating when the elements of the work will be completed and when deliverables, if any, will be provided. Also discuss schedules to manage multiple simultaneous state projects.
- D. Project Deliverables** – Fully describe deliverables to be submitted under the proposed contract, including the proposed format and delivery mechanism for each deliverable.

### 3.3 MANAGEMENT PROPOSAL

#### A. Project Management (SCORED)

- 1. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Include who within the firm will have prime responsibility and final authority for the work.
- 2. **Staff Qualifications/Experience** - Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. NASACT recognizes that the Proposer may not be able to identify all the staff resources that will be available to for a summer 2005 start date for the first state projects. However the Proposer must identify tentative staff in its proposal and any substitutions must be approved by NASACT and the contracting state prior to the actual start of work.

#### B. Experience of the Proposer (SCORED)

- 1. Indicate the experience the Proposer and any subcontractors have in the following areas:
  - a. Conducting baseline measures of human resource and financial business processes in the private sector.
  - b. Conducting baseline measures of human resource and financial business processes in the public sector, preferably other state governments.
  - c. Practical experience with governmental human resource and financial business practices and principles.
  - d. Developing and maintaining a database of public, private, and world-class measures of human resource and financial business processes.
  - e. Recommending human resource and financial business best practices in both the private and public sectors.
- 2. Describe other relevant experience that demonstrates the qualifications of the Proposer, and any subcontractors, for the performance of the contract.
- 3. Include a list of contracts the Proposer has had during the last five (5) years that relate to the Proposer's ability to perform the services needed under this RFP. List contract

reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

### **C. References (SCORED)**

List the company's name, contact person's name, contact person's title, address, and phone number, and fax numbers/e-mail addresses for three business references, with the details on the scope and focus of the human resource and financial baseline measures and analyses that were completed within the past five years. The Proposer must grant permission to NASACT to contact the references. Do not include current NASACT staff as references. These references will be contacted by NASACT to determine, but may not be limited to, the performance and quality of the baselines and analyses that were provided, for the top-scoring proposal(s) only.

### **D. Related Information (MANDATORY)**

If the Proposer has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Proposer's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated, and such litigation determined that the Proposer was in default. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Proposer's position on the matter. NASACT will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Proposer in the past five years, so indicate.

## **3.4 COST PROPOSAL**

The evaluation process is designed to award this procurement not necessarily to the Proposer of least cost, but rather to the Proposer whose proposal best meets the requirements of this RFP and who presents the best value. However, Proposers are encouraged to submit proposals which are consistent with state governments' efforts to conserve states' resources.

### **A. Identification of Costs (SCORED)**

Present the costs for the following:

- A state's high-level human resource and financial business process baseline measurement and the reports and presentation of findings and recommendations at the state level and at the individual agency level.
- A state's high-level reassessment of human resource and financial business process measurement and the reports and presentation of findings and recommendations at the state level and at the individual agency level.
- A state's high level human resource baseline measurement and the reports and presentation of finding and recommendations at the state level and at the individual agency level.
- A state's high level reassessment of human resource baseline measurement and the reports and presentation of finding and recommendations at the state level and at the individual agency level.
- A state's high level financial business process baseline measurement and the reports and presentation of finding and recommendations at the state level and at the individual agency level.
- A state's high level reassessment of financial business process baseline measurement and the reports and presentation of finding and recommendations at the state level and at the individual agency level.
- The Proposer's hourly rates for additional consulting.

**B. Computation**

The score for the cost proposal will be computed by dividing the lowest total cost bid received by the Proposer's total cost. The resultant number will be multiplied by the maximum possible points for the cost section.

**C. Additional Services**

The Proposer should describe here any additional services it might wish to offer. This part will not be scored. Additional services may or may not be purchased.

## 4. EVALUATION AND CONTRACT AWARD

### 4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an Evaluation Team designated by NASACT. The Team will determine the ranking of the proposals.

Items in Section 3, Proposal Contents, marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

NASACT, at its sole discretion, will select the top-scoring Proposers as finalists for oral presentations.

### 4.2 MOST FAVORABLE TERMS

NASACT reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Proposer can propose. NASACT reserves the right to request a best and final offer. NASACT also reserves the right to contact a Proposer for clarification of its proposal.

### 4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal – 35%		70 points
Project Approach/Methodology	25 points (maximum)	
Quality of Work Plan	15 points (maximum)	
Project Schedule	10 points (maximum)	
Project Deliverables	20 points (maximum)	
Management Proposal – 35%		70 points
Team Structure/ Internal Controls	15 points (maximum)	
Staff Qualifications/Experience	25 points (maximum)	
Experience of the Proposer	30 points (maximum)	
Cost Proposal – 30%		60 points
<b>Sub-Total</b>		<b>200 points</b>
References [top-scoring proposer(s) only]		10 points
<b>GRAND TOTAL</b>		<b>210 POINTS</b>

References will be contacted for the top-scoring proposer(s) only and will then be scored and added to the total score.

The results of these calculations will be used only to identify Proposers to be invited to oral interviews.

#### **4.4 ORAL PRESENTATIONS**

The highest scoring proposers will be required to make oral presentations to the Evaluation Team. The top-scoring Proposer(s) will be contacted to schedule a date, time and location. Commitments made by the Proposer at the oral interview, if any, will be considered binding. NASACT will not reimburse Proposers for any travel or other related expenses for oral interviews.

After the oral presentations, the Proposer may be expected to set forth its best and final offer.

#### **4.5 FINAL EVALUATION AND AWARD**

The score from the oral presentation will determine the successful Proposer, irrespective of scores determined by the evaluation process described in Section 4.3.

#### **4.6 NOTIFICATION TO PROPOSERS**

Proposers whose proposals have not been selected for further negotiation or award will be notified via fax or by e-mail.

#### **4.7 DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

#### **4.8 PROTEST PROCEDURE**

This procedure is available to Proposers who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Proposer is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Proposers protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers under this procurement.

All protests must be in writing and signed by the protesting party or an authorized agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator;
- Mathematical errors in computing the score;
- Non-compliance with procedures described in the procurement document or NASACT policy.



Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) NASACT's assessment of potential contracting states' needs or requirements.

Upon receipt of a protest, a protest review will be held by NASACT's Executive Director or employees delegated by the Executive Director who were not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Proposer who submitted a proposal, such Proposer will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold NASACT's action; or
- Find only technical or harmless errors in NASACT's acquisition process and determine NASACT to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide NASACT options which may include:
  - Correcting the errors and re-evaluating all proposals, and/or
  - Reissuing the solicitation document and beginning a new process, and/or
  - Making other findings and determining other courses of action as appropriate.

If NASACT determines that the protest is without merit, NASACT will enter into a contract with the apparently successful Contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.



## **5. RFP EXHIBITS**

Exhibit A Certifications and Assurances

Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

**CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by NASACT without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of NASACT or state government (whose employment at NASACT or state government was less than two years ago) whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that NASACT will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of NASACT, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document. If I/we fail to submit any exceptions, our right to negotiate exceptions later is waived.
8. The price or cost data quoted for services in response to this RFP are not in excess of those charged any other client/customer for the same services performed by the same individuals. The cost data and prices which have been submitted are accurate and complete.
9. The Proposer grants NASACT permission to contact references provided in the Proposer's proposal.
10. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

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Signature of Proposer

---

Title

---

Date

**CONTRACT FOR PERSONAL SERVICES  
BETWEEN  
THE NATIONAL ASSOCIATION OF STATE AUDITORS, COMPTROLLERS AND TREASURERS  
AND**

---

This Contract is made and entered into by and between the National Association of State Auditors, Comptrollers and Treasurers and the below named Proposer, hereinafter referred to as "CONTRACTOR,"

CONTRACTOR  
Address  
City, State & Zip Code  
Phone: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

**PURPOSE**

The purpose of this contract is to acquire professional services and expertise to assist state governments in establishing and analyzing high-level baseline measurements of state agencies' human resource and/or financial business processes. Results of the measurement and analyses will be presented to each contracting state with a prioritized list of recommendations to improve the state's human resource and financial business processes and information systems. Similar results and recommendations will also be provided to participating agencies in each state. NASACT will also receive a copy of these results.

The contact will also allow for follow-up measurements and benchmark comparisons of human resource and/or financial business processes, as determined by the contracting state.

**SCOPE OF WORK**

The CONTRACTOR will provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

*Option 1: Identify all tasks, work elements and objectives of the contract, and timetables by which major parts of the work are to be completed. The scope of work may be included within the text of the contract or attached as a separate exhibit as shown in Option 2 below.*

*Option 2: as included in the CONTRACTOR's Proposal dated \_\_\_\_\_ attached as Exhibit B, and NASACT's Request for Proposals attached as Exhibit C.*

Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between NASACT and the CONTRACTOR, and specific obligations of both parties.

The CONTRACTOR shall produce the following written reports or other written documents (deliverables) to the contracting state by the dates indicated below:

All written reports required under this contract must be delivered to \_\_\_\_\_, the Contract Manager, in accordance with the schedule above.

## **PERIOD OF PERFORMANCE**

Subject to other contract provisions, the period of performance under this contract will be from \_\_\_\_\_ or date of execution, whichever is later, through \_\_\_\_\_, unless sooner terminated or extended as provided herein.

## **COMPENSATION AND PAYMENT**

NASACT will pay CONTRACTOR upon receipt of approved invoices, which shall first be submitted to the Contracting State's Project Manager for approval in accordance with the contract deliverables payment schedule. The invoices shall describe and document to NASACT's and the contracting state's satisfaction a description of the work performed, the progress of the project, and fees.

NASACT shall pay an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) per state contract for satisfactory performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be the fixed price agreed upon in the contract.

## **BILLING PROCEDURES**

NASACT maintains a vendor file to use for processing vendor payments. CONTRACTORS are strongly encouraged to sign up for direct deposit.

NASACT will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Project Manager not more often than \_\_\_\_\_. The invoices shall describe and document to NASACT's satisfaction a description of the work performed, the progress of the project, and fees.

***NOTE: Payment will be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the contract, payment at conclusion of the contract, etc. For example, upon completion of:***

- ***Project organization (detailed plan, project kickoff meeting), 8% of the contract price.***
- ***Measurement (collection of state data), 42% of the contract price.***
- ***Analysis (reports and presentations of findings and recommendations), 50%.***

Payment shall be considered timely if made by NASACT within forty-five (45) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

NASACT may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by NASACT.

***NOTE: Optional Provision – On its own discretion, NASACT may withhold fifteen percent (15%) from the final payment until acceptance by NASACT of the final report (or completion of the project, etc.).***

## **CONTRACT MANAGEMENT**

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR:	Contract Manager for NASACT
<u>Name</u>	<u>Name</u>
<u>Contractor Name</u>	NASACT
<u>Address</u>	2401 Regency Road, Suite 302
<u>City, State Zip Code</u>	Lexington, KY 40503-2914
<u>Phone: ( )</u> <u>Fax: ( )</u>	Phone: 859-276-1147 Fax: 859-278-0507
<u>E-mail address:</u>	E-mail address:

The CONTRACTOR shall provide insurance coverage as set out in Request for Proposals No. 05-01. The intent of the required insurance is to protect NASACT should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

CONTRACTOR shall submit to NASACT within fifteen days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

**ASSURANCES**

NASACT and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

**ORDER OF PRECEDENCE**

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and contracting statutes and regulations.
- Special Terms and Conditions as contained in this basic contract instrument.
- Exhibit A – General Terms and Conditions.
- Request for Proposals No. 05-01 including provisions, terms or material incorporated herein by reference or otherwise incorporated.
- Exhibit B – Contractor’s Proposal dated \_\_\_\_\_.
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

**ENTIRE AGREEMENT**

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

**CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the contracting state, it is considered modified to conform to that statute or rule of law.

**AMENDMENTS**

The contract may be changed, modified or amended only by written amendment executed by both parties.

THIS CONTRACT, consisting of \_\_\_\_\_ pages and \_\_\_\_\_ attachment(s), is executed by the persons signing below who warrant that they have the authority to execute the contract.

**(CONTRACTOR)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**NASACT**

\_\_\_\_\_  
R. Kinney Poynter, Executive Director

\_\_\_\_\_  
Date



## GENERAL TERMS AND CONDITIONS

DEFINITIONS - As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "NASACT" shall mean the National Association of State Auditors, Comptrollers and Treasurers, and any other officials lawfully representing NASACT.
- B. "Agent" shall mean the Executive Director of NASACT and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean that Proposer, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

ACCESS TO DATA - The Contractor shall provide access to data generated under this contract to NASACT and to the legislative committees which oversee the contracting state's audit and to the contracting state's auditor, if applicable, at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED - No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by NASACT.

ASSIGNMENT - The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ATTORNEYS' FEES - In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys' fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose any information concerning NASACT or any contracting state, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of NASACT and the contracting state, or as may be required by law.

CONFLICT OF INTEREST - NASACT may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of NASACT's Procurement Policy for Cooperative Agreements, Section 6, involving the Contractor in the procurement of, or services under this contract.

In the event this contract is terminated as provided above, NASACT shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of NASACT provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS - Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned jointly by NASACT and each contracting state. NASACT shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to NASACT effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to NASACT a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to NASACT. Any rights and materials specific to a contracting state's project will be transferred from NASACT to that state.

The Contractor shall exert all reasonable effort to advise NASACT, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. NASACT shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. NASACT shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. NASACT shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES - Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with xxx (Agent). Disputes shall be resolved as quickly as possible.

1. The request for a dispute hearing must:
  - be in writing;
  - state the disputed issue(s);
  - state the relative positions of the parties;
  - state the Contractor's name, address, and contract number; and
  - be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

NASACT and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

GOVERNING LAW - This contract shall be construed and interpreted in accordance with the laws of the Commonwealth of Kentucky, and the venue of any action brought hereunder shall be in the Superior Court for Fayette County.

INDEMNIFICATION - To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless NASACT and all officials, agents and employees of NASACT, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless NASACT for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend and hold harmless NASACT only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

INDEPENDENT CAPACITY OF THE CONTRACTOR - The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of NASACT. The Contractor will not hold himself/herself out as or claim to be an officer or employee of NASACT by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE - NASACT may require the apparent successful Proposer to provide proof of adequate worker's compensation and public liability insurance coverage before entering into a contract. Additionally, NASACT may require, at its sole discretion, the apparent successful Proposer to provide proof of adequate professional malpractice liability or other forms of insurance. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by NASACT shall be in form and substance acceptable to NASACT.

LICENSING, ACCREDITATION AND REGISTRATION - The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY - Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with NASACT. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION - During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY PROTECTION CLAUSE - Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of NASACT and the contracting state or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless NASACT for any damages related to the Contractor's unauthorized use of personal information.

For purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

PUBLICITY - The Contractor agrees to submit to NASACT all advertising and publicity matters relating to this Contract which, in NASACT's judgment, NASACT's and the contracting state(s)' names can be implied or are specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of NASACT and the contracting state(s).

RECORDS, DOCUMENTS, AND REPORTS - The Contractor shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by NASACT, its auditors, and federal and state officials so authorized by law, rule, regulation, or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE - The Contractor shall complete registration with the Revenue Cabinet of the Commonwealth of Kentucky and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION - The Contractor shall provide right of access to its facilities to NASACT, or any of its officers, or to any other authorized agent or official of any contracting state or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS - In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, NASACT may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at NASACT's discretion under those new funding limitations and conditions.

SEVERABILITY - The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY - While on the premises of NASACT or a contracting state, the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security regulations.

SUBCONTRACTING - Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of NASACT.

TAXES - All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE - In the event NASACT determines the Contractor has failed to comply with the conditions of this contract in a timely manner, NASACT has the right to suspend or terminate this Contract. NASACT shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 3 days, the contract may be terminated. NASACT reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional

obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by NASACT to terminate the contract.

In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g. cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default, or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of NASACT provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE - Except as otherwise provided in this contract, NASACT may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, NASACT shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES - Upon termination of this contract, NASACT, in addition to any other rights provided in this contract, may require the Contractor to deliver to NASACT any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

NASACT shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by NASACT, and the amount agreed upon by the Contractor and NASACT for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by NASACT, and (iv) the protection and preservation of property, unless the termination is for default, in which case NASACT shall determine the extent of the liability of NASACT. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. NASACT may withhold from any amounts due the Contractor such sum as NASACT determine to be necessary to protect NASACT against potential loss or liability.

The rights and remedies of NASACT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to NASACT, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case NASACT have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of NASACT to the extent NASACT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to NASACT and deliver in the manner, at the times, and to the extent directed by NASACT any property which, if the contract had been completed, would have been required to be furnished to NASACT;
6. Complete performance of such part of the work as shall not have been terminated by NASACT; and
7. Take such action as may be necessary, or as NASACT may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which NASACT have or may acquire an interest.

#### TREATMENT OF ASSETS -

- A. Title to all property furnished by NASACT shall remain in NASACT. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in NASACT upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in NASACT upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by NASACT in whole or in part, whichever first occurs.
- B. Any property of NASACT furnished to the Contractor shall, unless otherwise provided herein or approved by NASACT, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of NASACT which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any NASACT property is lost, destroyed or damaged, the Contractor shall immediately notify NASACT and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to NASACT all property of NASACT prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER - Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by NASACT.