



RFP Announcement

**National Association of State Workforce Agencies (NASWA)
Center for Employment Security Education and Research (CESER)
Information Technology Support Center (ITSC)**

Request for Proposal: Unemployment Insurance: Lower Authority Appeals Information Technology Assessment

The National Association of State Workforce Agencies (NASWA), Information Technology Support Center (ITSC) is seeking a contractor who can develop an assessment plan and successfully conduct an assessment of the current status of the Unemployment Insurance (UI) Lower Authority Appeals (LAA) process system. The contractor will review the LAA process in each state, develop a summary report based on the results of the assessment, and recommend and provide necessary training and technical assistance (T&TA) in a cost effective manner, based on resources that are available.

This project will consist of two Phases:

Phase 1 includes: the design of an assessment tool, collection of information from all 53 state UI agencies, a limited review of other federal and/or state programs with an appeals process, review of IT tools supporting these systems, and preparation of a final report.

Phase 2 will consist of the design and development of T&TA tools and documents that can advise the states on how to improve their LAA operations and outcomes. If sufficient resources exist, consultations with individual and/or groups of states may be undertaken under the scope of this project.

The RFP consists of the following documents:

- **RFP: Unemployment Insurance: Lower Authority Appeals Information Technology Assessment**
- Attachment A: CESER General Contract Terms and Conditions

Important Dates:

RFP Publication Date: April 12, 2012

Bidders Webinar/Teleconference: April 25th 2012, 2:00 PM EST

- <http://naswa.webex.com/naswa>
- Keyword Search: **"RFP"**
- Click "Register"

Proposal Due Date: May 18th 2012, by 5:00 p.m. EDT to rfp_responses@itsc.org.



Request for Proposal (RFP)

For:

Unemployment Insurance:

Lower Authority Appeals Information Technology Assessment

Issued By:

**National Association of State Workforce Agencies (NASWA)
Center for Employment Security Education and Research (CESER)
Information Technology Support Center (ITSC)**

Circulation Date

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rfp_responses@itsc.org

1. Introduction

The National Association of State Workforce Agencies (NASWA), Information Technology Support Center (ITSC) is seeking a contractor who can develop an assessment plan and successfully conduct an assessment of the current status of the Unemployment Insurance (UI) Lower Authority Appeals (LAA) process system. The contractor will review the LAA process in each state, develop a summary report based on the results of the assessment, and recommend and provide necessary training and technical assistance (T&TA) in a cost effective manner, based on resources that are available.

2. Project Description

The U.S. Department of Labor (USDOL)'s, Employment and Training Administration (ETA)'s Office of Unemployment Insurance (OUI) is required to ensure conformity and compliance of state UI laws, regulations, rules, and operations, with Federal law. Ongoing T&TA are key strategies to ensure this federal function is accomplished. OUI has a strong interest in providing effective and efficient T&TA to state agency UI and IT staff.

As part of this effort, contractor support is needed to assess states' UI LAA procedures and practices and the IT systems in place to support the LAA process. The assessment should also identify promising practices and trends in appeals process in other federal and/or state agencies which perform similar functions to those in the UI LAA process. This extended review should also examine how technology is being utilized and driving change.

The assessment protocol should:

- Review states that operate under a “panel” system where appeals for UI, state disability programs, transportation, etc., are centralized under one operation,
- Identify deficiencies, or strengths, in current IT systems, workflow processes, communication processes, and specific state statute restrictions impacting LAA,
- Identify the IT pressure points states have with the LAA workload and how specific technology solutions can improve performance for state LAA operations,
- Incorporate a brief review of the higher authority appeals processing systems interfaces for those 48 states that have a second level UI appeals authority within the program,
- Investigate and review how similar government programs with an appeals function use IT solutions to improve the efficiency and effectiveness of appeals processing, and
- Examine IT software tools and applications such as scheduling applications, case management and digital imaging systems to determine how these IT tools can improve state UI LAA processing. (e.g., court case management systems).

This project will consist of two Phases:

Phase 1 includes:

- Design of an assessment tool,
- Collection of information from all 53 state UI agencies,

Lower Authority Appeals Information Technology Assessment

- Review of other programs with an appeals process,
- Review of IT tools supporting these systems, and
- Preparation of a final report.

Phase 2 will consist of the design and development of T&TA tools and documents that can advise the states on how to improve their LAA operations and outcomes. If sufficient resources exist, consultations with individual and/or groups of states may be undertaken under the scope of this project.

3. Project Background

USDOL/ETA/OUI has developed national LAA time lapse measures to capture how timely a hearing is held, and a decision rendered. The time lapse Acceptable Level of Performance (ALP) is, 60 percent of appeals must be disposed of as completed cases within 30 days of the appeal date and 80 percent of completed case appeals must be disposed of within 45 days of appeal date. Case Aging measures the average age (in days) of appealed cases that are pending disposition. This measure shows the average age of all cases that have been appealed but not yet heard or decided, i.e., the average age of cases still waiting (in days) for a hearing and a written decision. The average age of pending cases ALP is 30 days – meaning cases should not be pending for more than 30 days.

The number of states consistently not meeting UI LAA ALP measures is growing. For calendar year 2010, there were only twelve states meeting the 30-day timeliness measure, seventeen states meeting the 45-day timeliness measure, and twenty-four states meeting the 30-day case aging measure.

For calendar year 2010, only 52 percent of appeals filed were able to be docketed for a hearing, have the hearing heard, and a written decision issued within the 45 day performance time frame from the date the appeal was first filed. A full assessment of states LAA processing is needed to see where technology can improve processes, procedures, and practices for the UI appeals process from scheduling a hearing to conducting the hearing including rendering decisions, interfacing with legacy UI Claims IT systems and Higher Level Appeals Authorities.

4. Organization Background

NASWA is an organization of state administrators of unemployment insurance laws, employment services, training programs, employment statistics, labor market information and other programs and services provided through the publicly funded state workforce system. The mission of NASWA is to serve as an advocate for state workforce agencies, as a liaison to workforce system partners, and as a forum for the exchange of information. NASWA was founded in 1937. Since 1973, it has been a private, non-profit corporation, financed by annual dues from its member agencies and other revenue, <http://naswa.org/>.

CESER is an education and research center located within NASWA, focused on workforce development and unemployment insurance issues, <http://naswa.org/>.

ITSC is located within NASWA; it was established in 1994 as a national resource by the U. S. Department of Labor (USDOL) to assist all state UI agencies in the area of UI IT <http://itsc.org/>.

USDOL/ETA/OUI is responsible for providing: leadership, direction and TA to state workforce agencies in the implementation and administration of UI programs; oversight, guidance, and TA for the federal-state unemployment compensation program; and budget and legislative support to state workforce agencies to administer their UI programs and assist individuals to return quickly to suitable work.

5. Overview –Federal-State Unemployment Insurance Program

In general, the federal-state UI program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state UI law), and meet other eligibility requirements of state UI law. The UI program is jointly financed through federal and state employer payroll taxes (federal/state UI tax). Employers, generally, are subject to both state and federal unemployment taxes if: (1) they pay wages to employees totaling \$1,500, or more, in any quarter of a calendar year; or (2) they had at least one employee during any day of a week during 20 weeks in a calendar year, regardless of whether or not the weeks were consecutive. It should be noted that UI law(s) vary from state to state.

UI benefits are intended to provide temporary and partial wage replacement to unemployed individuals who meet the requirements of state law. Each state administers their individual UI program within guidelines established by Federal law. Eligibility for UI, benefit amounts and the length of time benefits are available are determined by the state law under which UI claims are established.

5.1 Eligibility

Individuals must meet state requirements for wages earned or time worked during an established period of time referred to as a "base period." In most states, this is usually the first four out of the last five completed calendar quarters prior to the time that the claim is filed. Individuals must be determined to be unemployed through no fault of their own (determined under State law), and meet other eligibility requirements of State law.

5.2 Filing an Initial UI Benefit Claim

Individuals are generally expected to contact the State UI agency as soon as possible after becoming unemployed. In some States, claims can be filed by telephone or over the Internet.

Generally, a claim is filed with the state where an individual worked. If an individual has worked in a state other than the one where he/she now lives or if the individual worked in multiple states, the state UI agency where the individual is living can provide information about how to file a claim with other states.

It normally takes two to three weeks after an individual files a claim to receive the first benefit check. Some States require a one-week waiting period; therefore, the second week claimed is the first week of payment, if an individual is otherwise eligible.

5.3 Benefits

In general, benefits are based on a percentage of an individual's earnings over a recent 52-week period up to a state maximum weekly benefit amount. Benefits can be paid for up to a maximum of 26 weeks in most states; although in cases where the claimant has partial earnings they can claim each week over the 52 week benefit year.

In some cases, instead of being laid off, workers may have their hours reduced during an economic downturn. Or, unemployed workers may find short term work while looking for a permanent, full-time job. These circumstances characterize partial unemployment. The UI system is set up to permit benefit receipt by these workers as long as they meet all eligibility requirements. However, the weekly benefit amount payable differs. The worker's UI payment will generally equal the difference between the weekly benefit amount and earnings. All states disregard some earnings as an incentive for workers to take short term work.

Additional weeks of benefits may be available during times of high unemployment, through a variety of extended benefit programs. The individuals weekly benefit amount remains the same for the additional weeks. Some states provide additional benefits under certain circumstances for specific purposes.

5.3.1 Continued Weekly Benefit Eligibility

An individual must file a weekly or biweekly claims certification after the week(s) of total or partial unemployment and respond to questions concerning their continued eligibility. The individual must report any earnings from work during the week(s) and any job offers or refusal of work during the week. Most states have claimants file their weekly certifications by telephone or Internet.

When a claimant becomes fully employed, or earns wages in excess of an allowable amount according to state law, they are not eligible for benefits. The primary root cause of UI improper payments is claimants who return to either full time or part time employment and fail to report their earnings for the week being certified.

When directed, individuals must report to their local UI Claims Office or One-Stop/Employment Service Office on the day and at the time scheduled to do so. If an individual fails to report as scheduled for any interview, benefits may be denied. An individual must continue to meet the eligibility requirements as stated above.

5.4 Appeals

If an individual is separated from his/her last job due to some reason other than "lack of work" a determination will be made regarding his/her eligibility for benefits. Generally all determinations of whether or not an individual is eligible for benefits are made by the appropriate State under its law or applicable federal laws. If a claimant is disqualified/denied benefits, s/he has the right to file an appeal. Employers may also appeal a determination if they do not agree with the State's determination regarding an individual's eligibility. States will advise claimants and employers of their appeal rights.

Claimants/employers must file their appeal within an established time frame under the UI law for that state. Generally, when an appeal is filed, the case is scheduled for a hearing with an administrative law judge / hearing officer from the state's UI appeals office. In some States, appeal hearings can be held by telephone or in person. The hearing involves a fact-finding process. The hearing officer listens to each side and makes a decision on the issues in the case.

LAA: First Appeals Stage

All states, in conformity with §303(a) (3), SSA, provide an opportunity for a fair hearing before an "impartial tribunal" to all individuals whose benefit claims are denied. The number of days for appealing to this first appeals body is generally stated in terms of "days" or "calendar days." The number of days for filing an appeal after notice of the determination varies among the states, ranging from 7 to 30 days. In many states, the time limit may be extended if good cause is shown.

As a result of the Java decision, a claimant who has been held eligible for benefits will continue to receive benefits until such time as a decision is issued reversing the determination or decision allowing benefits. An employer's appeal may not affect continuation of payment of benefits until a decision is issued actually denying benefits. Most state laws specifically provide for the payment of benefits pending an appeal from a determination or decision allowing benefits, while other states have either interpreted their laws to provide for continuation of payments or have been required by court order to follow this procedure.

In all but a few states the decision of the first-stage appeals body is final in the absence of a further appeal. In a few states, however, this decision may be reexamined by the same body or by another body without any further appeal having been made.

Higher Authority: Second Appeals Stage

All states but the District of Columbia, Hawaii, Minnesota, Nebraska, and the Virgin Islands have a board of review, board of appeals, or other administrative body to hear cases appealed from the first stage appeal. In this second appeals stage, the case is usually considered upon the record made before the lower appeals tribunal, but the higher appeals tribunal normally has the power to weigh the evidence in the record and pass

upon questions of fact as well as of law. The higher appeals tribunal may also take additional evidence.

6. Statement of Work

Objectives:

Assess current LAA procedures and processes including IT systems states use to process their UI appeals and identify alternative technologies states may implement to improve their overall LAA appeals performance and processing.

Identify issues and potential technical solutions that will help all states, with a focus on those states not meeting the ALPs.

To assist states (Phase 2) to gain a better understanding of potential technical solutions and processes to implement to improve their LAA performance.

Identify trends in the appeals world outside of UI and review how other similar programs, with an appeal function, apply and implement IT solutions to improve their performance and streamline appeals processing.

Develop a repository of best practices and lessons learned states will have access to find business and IT solutions for improving their LAA performance and processing.

Performance Requirements: The contractor will be responsible for developing a method to effectively assess the states' UI LAA procedures and IT systems and their impact on appeals timeliness and case aging. The contractor will perform the following work:

Phase 1: Needs Assessment: The contractor will develop and implement an appropriate assessment tool and process to gather the information required from **all 53 states**. Although it is anticipated that the assessment will rely heavily on virtual and remote assessment tools and questionnaires it may be necessary to conduct a small number (up to 5) of onsite visits to assess options to improve performance, including a review of IT systems such as Scheduling Applications, Digital Recording Systems, and Case Management Systems.

In addition to gathering information from state UI LAA processes the contractor will also gather appropriate information from a set of other federal, state, and private appeals programs to gain an understanding of the latest and most advanced processes in these programs. The contractor will submit a list of such programs to be assessed and the rationale for each to OUI and ITSC for approval prior to conducting the assessment. The final report prepared as a result of this Phase should include a clear reference as to what processes and procedures from these programs might prove of use to the UI LAA system.

Phase 2: TA and Training: Upon completion of the assessment phase of the project, the contractor in consultation with ITSC and OUI staff will determine appropriate methodologies to implement Phase 2, including the TA and training needs that are

Lower Authority Appeals Information Technology Assessment

deemed to be required and identifying the most cost effective ways to deliver this, e.g., utilizing a centralized training venue or alternative media.

The Contractor may provide assistance to the states by:

- a) Discussing the results of the Needs Assessment and identify immediate and long term IT and other system actions that can be taken to improve timeliness and case aging;
- b) The contractor may provide assistance as requested to key state IT and other staff that are considering new IT systems; and
- c) Assisting with the development of an Action Plan. The Contractor will assist the state in developing an action plan to correct problems identified.

7. Deliverables: Phase 1:

1. **Monthly Progress Reports.** The reports will cover the status of activities underway in the Project in general and specific to each state, any issues identified that need input or a decision from ITSC, a summary of expenditures, upcoming activities, and adjustments as required to the project timeline.
2. **Assessment Protocol:** the contractor will provide a draft assessment protocol to ITSC and OUI for review and clearance prior to implementing the data gathering portion of Phase 1. This protocol should include a description of the processes to be used to gather the relevant information, a list of areas to be assessed from state UI LAA systems. The contractors should also provide suggestions for outside systems the contractor feels are appropriate. The contractor will incorporate any changes suggested and prepare a final assessment protocol.
3. **Assessment Report:** the contractor will conduct an assessment of each state's LAA IT processes and systems/applications, providing a summary of each, suggested areas of concern, and possible TA and Training interventions to improve state UI LAA IT processes. The report should also include the results of the assessment of other non-UI Appeals processes that were agreed to by OUI and ITSC and the potential impact such process may or may not have for the UI LAA system. The contractor will present this information in a written report and in a searchable data base utilizing MS Access or a similar database format.

7. Deliverables: Phase 2: (Subject to Available Funding)

1. **Monthly Progress Reports:** The reports will cover the status of activities underway in the Project in general and specific to each state, any issues identified that need input or a decision from ITSC, a summary of expenditures, upcoming activities, and adjustments as required to the project timeline.

Lower Authority Appeals Information Technology Assessment

2. **T&TA Protocol:** the contractor will provide a draft T&TA protocol to ITSC and OUI for review and clearance, describing the need requirements developed in Phase 1 and the interventions that should be used to mitigate the problems and issues identified. The contractor should also provide a detailed plan on how to implement the appropriate T&TA strategies prior to implementing the intervention portion of Phase 2. The contractor will incorporate any changes suggested and prepare a final assessment protocol.
3. **T&TA Implementation:** The contractor will implement the plan proposed in (2) and as agreed to by OUI and ITSC and subject to available resources.
4. **Completed Project Reports.** Within one month of completion of activities in a given state, the contractor will prepare a brief report of actions taken to assist the state, including expected outcomes.
5. **Final Report.** As a final deliverable, contractor will prepare a final report detailing current IT systems that states are dependent upon to process their appeals, as well as identify alternative technology to improve overall appeals processing. The final report should also identify issues and potential technical solutions that will help all states, but especially those not meeting the ALPs gain a better understanding of their specific technical and process issues, and any lessons learned that may be applicable to a larger number of states.

8. Place of Performance

Work will be done primarily off-site. Most meetings and activities can be managed through conference calls and webinars. Periodic in-person meetings may be needed and/or desirable.

9. Travel

Generally, travel will be to enable the in-person meetings proposed by the contractor to be held at the USDOL in Washington, D.C, or at state sites as required. A small number of onsite state visits may be necessary to assess options to improve performance. Onsite state visits will be determined during Phase 1 of the project.

10. Estimated Project Timeline

The period of performance for this project is from date of award through February 28, 2013 (May be extended).

11. Delivery Schedule

PWS Task	Deliverable Title	Format	Number	Calendar Days After Award
Phase 1				
1	Monthly progress	Contractor-	Standard	30

Lower Authority Appeals Information Technology Assessment

	reports	Determined Format	Distribution*	
2	Assessment Protocol	Contractor-Determined Format	Standard Distribution*	120
3	Final Report	Contractor-Determined Format	Standard Distribution*	150
Phase 2				
1	Monthly Progress Reports	Contractor-Determined Format	Standard Distribution	TBD
2	Training and TA Protocol	Contractor-Determined Format	Standard Distribution	TBD
3	Completed Project Reports	Contractor-Determined Format	Standard Distribution	TBD
4	Final Report	Contractor-Determined Format	Standard Distribution	TBD
* Standard Distribution: 1 copy of the transmittal letter <u>without</u> the deliverable to the Contracting Officer; 1 copy of the transmittal letter <u>with</u> the deliverable to the Primary TM				

12. Proposal Structure:

The following table details the required response outline and specifies the content of the response sections:

Proposal Response Outline			
Section Number	Section Title	Max Points Allowed	Section Content
1	Executive Summary	5	Summarize the RFP response; (Max 3 pages)
2	Technical Response	40	Technical approach, describe the proposed solution(s) (Max 20 pages)
3	Project Management	15	Project management process and experience of proposed key staff (Max 10 pages)
	Proposed Staff	10	
4	Previous project experience	10	Provide two examples of other similar projects related to the SOW and contact information for each project. (Two pages/example).
5	Terms and Conditions	NA	Acceptance of Terms and Conditions (Attachment A)
6	Business Plan: Cost Estimates Separate Estimate for Phase 1 and Phase 2 (Submit Business Plan as Separate from Technical Proposal)	20	Each response should include a price breakdown of the proposed solution for each Phase. Pricing should include a detailed buildup of Labor costs, Other Direct Costs, Travel, and Fees. Sufficient detail should be utilized to support the work described in the RFP. (Max 20 Pages)
7	Additional Information	NA	Confidentiality requirements and other information the vendor deems appropriate

13. Project Cost

The project is a Firm fixed Price (FFP) deliverables based contract. The price quoted shall be all-inclusive. Final Project deliverables, deliverables acceptance criteria and payment schedule to be negotiated with the selected contractor upon project start. Note: the cost estimate should include a full buildup of costs and rates used to establish the FFP cost estimate. ITSC will reserve the right to select multiple vendors to submit best and final offers.

14. Optional Tasks

Not Applicable

15. Other Clearances

Not Applicable

16. Other Pertinent Information or Special Considerations

The OUI will have final editorial control over the content Lower Authority Appeals Information Technology Assessment. All data, technical information, materials gathered, originated, developed, prepared used or obtained in the performance of the contract shall be and remain the property of USDOL including in progress drafts and final deliverables and any software programs and accompanying documentation and source code. USDOL and states may freely use the Lower Authority Appeals Information product. Other areas of consideration:

- a. **Identification of Possible Follow-on Work.** Not applicable
- b. **Identification of Potential Conflicts of Interest (COI).** Not applicable
- c. **Identification of Non-Disclosure Requirements.** Not applicable

17. Submission Information

Proposals must be submitted to:
Joseph Vitale, Director ITSC
Information Technology Support Center/CESER
National Association of State Workforce Agencies
25 E Street, NW
Washington, DC 20001

Electronic versions of the proposal must be submitted by **5:00 PM EDT on May 18th 2012** to rfp_responses@itsc.org.

Proposals should be prepared with 12 Pt. font and 1 inch margins.

18. For Additional Information or Clarification

Due to the short time frame for interested vendors to respond to this RFP, NASWA/ITSC will hold a bidders webinar and teleconference question and answer session. This will be the only

Lower Authority Appeals Information Technology Assessment

opportunity for interested vendors to ask questions for clarification on the RFP. NASWA/ITSC will answer all questions to the best of its ability during this webinar/teleconference. Questions may be submitted in advance via email and will be answered during the conference call. No questions will be addressed after the close of the webinar/teleconference call.

Joseph Vitale, ITSC Director
Information Technology Support Center
National Association of State Workforce Agencies
25 E Street, NW
Washington, DC 20001
rfp_responses@itsc.org

19. Basis for Award of Contract

The following criteria will be used to evaluate vendor proposals in the awarding of this contract:

Proposal Response Review Criteria			
Section Number	Section Title	Max Points Allowed	Review Criteria
1	Executive Summary	5	<ul style="list-style-type: none">Provides a clear, concise overview of the proposal
2	Technical Response	40	<ul style="list-style-type: none">Overall Quality of Proposal,Demonstrated understanding of the SOW,Clear description of proposed solution(s),Demonstrated ability to meet all deliverables,Understanding of the LAA process,Understanding of current LAA issues,Knowledge of appeal processes beyond UI LAA process, andDescription of the work assigned to any sub-contractors proposed for use on this project and the vendors past experience with them
3	Project Management	15	<ul style="list-style-type: none">Demonstrated understanding of sound project management principles and the capability to apply them to the work of this RFP,A clearly described project management structure,A project management plan, following the ITSC annotated outline to be provided,A project schedule showing Initiate/ Plan/ Execute/ Monitor-Control/Close stages created using Microsoft Project, using the

Lower Authority Appeals Information Technology Assessment

			<p>ITSC outline to be provided,</p> <ul style="list-style-type: none"> • Project status reports that will be provided to the CESER-ITSC project manager, and • Description of how the work assigned to any sub-contractors will be managed.
	Proposed Staff	10	<ul style="list-style-type: none"> • Demonstrated knowledge, skills, and experience of staff proposed to accomplish the work, including the time available of designated Key staff to commit to the project.
4	Previous project experience	10	<ul style="list-style-type: none"> • Relevant demonstrations of past projects and/or client references the describe the project work and key staff that were assigned to the project, and • Consideration will be given to offeror's reputation in terms of quality, problem resolution, business control, timeliness, business relations, and customer service
5	Terms and Conditions	NA	
6	<p>Business Plan: Cost Estimates Separate Estimate for Phase 1 and Phase 2 (Submit Business Plan as Separate from Technical Proposal)</p>	20	<ul style="list-style-type: none"> • Business Plan • Cost Summary including: <ul style="list-style-type: none"> • Itemized breakdown of all direct and indirect costs, • FTE's by skill set needed for the project, • Hourly rate and the total hours by skill set, • Indirect rates, • Size of company, or organization, and • Length of time in business.
7	Additional Information	NA	



Center for Employment Security Education and Research
444 North Capitol St. NW, Suite 142
Washington, DC 20001

Table of Contents
For Attachment A

General Provisions – Contracts

Clause

1. Definitions
2. Relationship
3. Arbitration and applicable law
4. Assignment and Subcontracting
5. Financial Record Keeping and Inspection
6. Audit
7. Allowable Costs
8. Right to Disseminate
9. Remedies
10. Ownership Rights
11. Personnel
12. Modification of the Contract
13. Excusable Delays
14. Inspection of Services
15. Insurance Requirements
16. Confidential Information
17. Laws and ordinances
18. Limitation of Liability
19. No waiver of conditions
20. Public release of information
21. Taxes
22. Term and Termination
23. Warranty of Services
24. Special Damages
25. Concerned Funding Agency
26. Review and Coordination
27. Entire Agreement
28. Flow down Provisions
29. Compliance with Applicable Laws
30. Indemnification
31. Survival



Attachment A

General Terms and Conditions

1. Definitions

A. *Agreement* shall mean the Master Agreement entered into between Contractor and CESER, including the Scope of Work, these General Terms and Conditions, and any other attachments and exhibits.

B. *Services* shall mean those services Contractor is to provide pursuant to the Agreement, including any Scope of Work.

C. *Work* shall mean all work, deliverables, documents, data, goods, and other materials produced, developed, collected, or authored by Contractor pursuant to the Agreement.

D. *Concerned Funding Agency* means any third party entity providing funding, in whole or in part, related to the Agreement.

2. Relationship

The Contractor is an independent contractor, and the relationship between CESER and the Contractor shall be solely contractual and not in the nature of a partnership, joint venture, or general agency. Neither party may speak nor act on behalf of the other, nor legally commit the other.

3. Arbitration and applicable law

Any controversy or claim arising out of or relating to this Contract or breach thereof shall be settled by arbitration to be held in the District of Columbia. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. This Contract will be governed by the laws of the District of Columbia.

4. Assignment and Subcontracting

This Contract or any interest hereunder shall not be assigned or transferred by the Contractor without prior written consent of CESER and is subject to such terms and conditions that CESER may impose.



5. Financial Record Keeping and Inspection

The Contractor warrants that it shall, during the term of the Agreement and for a period of three (3) years following the termination or expiration of the Agreement, maintain accurate and complete financial records, including accounts, books, and other records related to charges, costs, disbursements, and expenses, in accordance with generally accepted accounting principles and practices, consistently applied.

CESER, directly or through its authorized agents, auditors or other independent accounting firm, at its own expense, and the Concerned Funding Agency directly or through its duly authorized representatives, shall have the right, from time to time, upon at least ten (10) days notice, to audit, inspect, and copy the Contractor's records. The Contractor shall fully cooperate, including by making available such of its personnel, records and facilities as are reasonably requested by CESER or the Concerned Funding Agency. This Section shall remain in force during the term of the Agreement and for the three (3) years following the termination or expiration of the Agreement. If an audit, litigation, or other action involving the records is started before the end of the three (3) year period, Contractor agrees to maintain the records until the end of the three (3) year period or until the audit, litigation, or other action is completed, whichever is later.

6. Audit

The Contractor, at its own expense, shall meet the applicable audit requirements of OMB Circular A-133 if the Contractor has more than \$500,000 in expenditures in a year in awards (including contracts, grants, cooperative agreements, etc.) made by a federal agency. The Contractor must submit a copy of its A-133 audit report, prepared by an independent certified public accounting firm, to the attention of Chief Financial Officer, Center for Employment Security Education and Research, 444 North Capitol Street, N.W., Suite 142, Washington, D.C. 20001 within 30 days of its receipt of the audit report. In instances where non-compliance with federal laws and regulations has been noted in the Contractor's audit report, the Contractor must outline in writing its plan for corrective action and must affirmatively respond to CESER when its corrective action plan has been successfully completed.

Contractor shall keep audit reports, including reports of any of its sub-subcontractors, on file for three (3) years from their issuance. Contractor shall permit independent auditors to have access to the records and financial statements as necessary for CESER and Contractor to comply with OMB Circular A-133.

Contractor agrees that in the event that Contractor's audit report indicates instances of noncompliance with federal laws and regulations, including but not limited to OMB Circular A-133, that Contractor covenants and agrees to take any and all corrective actions necessary or required or as directed by CESER.



Contractor agrees to provide audits annually.

In the event that audits are not received, CESER may, in its discretion,

- a) withhold a percentage of the sums due and owing hereunder until the audit is completed satisfactorily;
- b) withhold or disallow overhead charges; or
- c) suspend this Contract until the audit is completed and all required reports are provided.

The Contractor shall hold harmless, indemnify and defend CESER and the Concerned Funding Agency or agencies, their consultants and each of their officers, partners, agents and employees from any and all liability, claims, losses, (including but not limited to the loss or threatened loss of tax exempt status), costs, fees, expenses, penalties, damages and/or obligations including but not limited to the costs of defense of such claims, attorney's and audit fees arising out of the failure to provide such audit reports. The Contractor shall include the provisions of this Section 15 in any subcontract executed in connection with this Project.

7. Allowable Costs

Allowable costs shall be determined in accordance with applicable Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, and A-133 as well as by the terms of the agreement between CESER and the Concerned Funding Agency, and any rules of, or guidelines issued by, the Concerned Funding Agency. The Contractor is responsible for reimbursing CESER in a timely and prompt manner for any payment made under this subcontract which is subsequently determined to be unallowable by CESER, the Concerned Funding Agency, or other appropriate Federal or State officials.

8. Right to Disseminate

Unless otherwise expressly set forth to the contrary in the Contract, CESER shall have the right to use and have used, for any purpose, unpatented information concerning the services performed by the Contractor which the Contractor may disclose to CESER during performance of this Contract if such information is furnished without restrictions on its use.



9. Remedies

The Contractor acknowledges that monetary damages alone will not adequately compensate CESER in the event of a breach by the Contractor of the restrictions imposed and therefore the Contractor hereby agrees that in addition to all remedies available to CESER at law or in equity, including, if applicable, under the District of Columbia Trade Secrets Act, or corresponding applicable State law, CESER shall be entitled to interim restraints and permanent injunctive relief for enforcement thereof, and to an accounting and payment over of all receipts realized by the Contractor as a result of such breach.

10. Ownership Rights

The services provided by the Contractor pursuant to the Agreement shall be “work for hire” and therefore all Work shall be sole and exclusive property of CESER. To the extent that the Services, or any part of them, may not constitute work for hire under the law, Contractor hereby transfers to CESER all right, title, and interest in and to the Work. Without limiting the foregoing, CESER shall have access to the Work at any time during the term of the Agreement.

11. Personnel

Any personnel identified in the Agreement as individuals who will be performing the Services or producing the Work may not be changed without the written approval of CESER.

12. Modification of the Contract

The Agreement may not be modified except by further written agreement signed by the parties.

13. Excusable Delays

The Contractor shall not be liable for damages, including liquidated damages, if any, for delays in performance or failure to perform due to causes beyond the control and without fault or negligence of the Contractor. Such causes include but are not limited to, acts of God, acts of the public enemy, acts of the United States Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.



14. Inspection of Services

A. All services shall be subject to inspection by CESER, to the extent practicable at all times and places during the Contract. All inspections by CESER shall be made in such manner as not to unduly delay the work.

B. If any services performed hereunder are not in conformity with the requirements of this Contract, CESER shall have the right to require the Contractor to perform the services again in conformity with the requirements of the Contract, at no additional expense to CESER. When the defective services performed are of such nature that the defect cannot be corrected by re-performance of the services, CESER shall have the right to: (1) require the Contractor to immediately take all steps necessary to ensure future performance of the services in conformity with the requirements of the Contract; and (2) reduce the Contract price to reflect the reduced value of the services performed. If the Contractor fails to perform promptly the services again or to take necessary steps to ensure future performance of the services in conformity with the requirements of the Contract, CESER shall have the right to either (a) by Contract or otherwise have the services performed in conformity with the Contract requirements and charge the Contractor any costs incurred by CESER that is directly related to the performance of such services; or (2) terminate this Contract.

15. Insurance Requirements

The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of coverage in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, in respect of death or personal injury, or loss of or damage to property. The Contractor shall produce to CESER, on request, copies of all insurance policies referred to in this condition or other evidence confirming the existence and extent of the coverage given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

16. Confidential Information

Any information regarding CESER that is not generally publicly known or available, whether or not such information would constitute a trade secret under statutory or common law, that is disclosed to or discovered by the Contractor during the course of the Agreement (hereinafter, "Confidential Information") shall be considered confidential and proprietary to CESER, and the Contractor shall maintain all Confidential Information in confidence; shall employ reasonable efforts to ensure the security of the Confidential Information; and shall not disclose the Confidential Information to any third party or use the Confidential Information except as necessary to perform the Services or produce the Work. Should the Contractor receive a subpoena directing disclosure of any



Confidential Information, the Contractor shall immediately inform CESER and cooperate fully with CESER in responding to the subpoena.

17. Laws and ordinances

The Contractor shall comply will all applicable laws, ordinances, rules and regulations including Federal, State, and Municipal authorities and departments relating to or affecting the work herein or any part thereof, and shall secure and obtain any and all permits, licenses and consents as may be necessary in connection therein.

18. Limitation of Liability

Notwithstanding any other provision of the Agreement, under no circumstances shall the liability of CESER to the Contractor exceed to the total amount of compensation to be paid to the Contractor.

19. No waiver of conditions

Failure of CESER to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or waiver of any other default of the Contractor.

20. Public release of information

Unless the prior consent of CESER is obtained, the Contractor shall not, except as may be required by law or regulation, in any manner advertise or publish or release for publication any statement or information mentioning CESER, or the fact that the Contractor has furnished or contracted to furnish to CESER the services required by this Contract, or quote the opinion of any employee of CESER.

21. Taxes

Unless prohibited by law or otherwise stated to the contrary to this contract, the Contractor shall pay and has not included in the price of this contract, any Federal, State or Local Sales Tax, Transportation Tax, or other similar levy which is required to be imposed upon the work or services to be performed.



22. Term and Termination

The Agreement shall be for such term as is set forth in the Agreement. The Agreement may be terminated by CESER prior to the end of any term on fifteen (15) days written notice.

In addition, this Agreement may be terminated by either party on written notice should the other party: (a) fail to cure a material breach within ten (10) days of delivery of written notice; (b) become insolvent; (c) be the subject of a bankruptcy filing; or (d) cease doing business. Upon termination, the Contractor shall deliver to CESER: all Work, whether in final or draft form, that has been produced as of the date of termination; all Confidential Information; and any materials or items previously provided to the Contractor by CESER. Upon receipt thereof by CESER, the Contractor shall be paid for work performed through the date of termination. In all instances of terminations, the Contractor shall use best efforts to not incur new costs and expenses after the notice of termination, and shall cancel as many outstanding obligations as possible.

23. Warranty of Services

The Contractor warrants and represents that: (a) the Services shall conform to the Scope of Services in all respects; (b) the Work shall be original to the Contractor and shall not infringe the copyright or other rights of any party; (c) the Contractor possesses, and shall employ, the resources necessary to perform the Services in conformance with the Agreement; (d) the Services shall be performed, and the Work produced, in accordance with high standards of expertise, quality, diligence, professionalism, integrity, and timeliness; and (e) the Contractor has no interest, relationship, or bias that could present a financial, philosophical, business, or other conflict with the performance of the Work or create a perception of a conflict or a lack of independence or objectivity in performing the Work.

24. Special Damages

Neither party shall be liable to the other for consequential or indirect damages, including lost profits, or for punitive damages, arising from breach of the Agreement.

25. Concerned Funding Agency

This Agreement is subject to the terms of any agreement between CESER and a Concerned Funding Agency and in particular may be terminated by CESER without



penalty or further obligation if the Concerned Funding Agency terminates, suspends or materially reduces its funding for any reason.

Additionally, the payment obligations of CESER under this Agreement are subject to the timely fulfillment by Concerned Funding Agency of its funding obligations to CESER.

26. Review and Coordination

To insure adequate review and evaluation of the Services and Work, and proper coordination among interested parties, CESER shall be kept fully informed concerning the progress of the Work and Services to be performed hereunder, and, further, CESER may require the Contractor to meet with designated officials of CESER from time to time to review the same.

27. Entire Agreement

The Agreement constitutes the entire agreement between the parties relating to the subject matter of the contract. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral.

28. Flow down Provisions

The Contractor agrees to assume, as to CESER, the same obligations and responsibilities that CESER assumes toward the Concerned Funding Agency under those Federal Acquisition Regulations (FAR), if any, and applicable Concerned Funding Agency acquisition regulations, if any, that are mandated by their own terms or other law or regulation to flow down to subcontractors or subgrantees, and therefore the Agreement incorporates by reference, and the Contractor is subject to, all such mandatory flow down clauses. Such clauses, however, shall not be construed as bestowing any rights or privileges on the Contractor beyond what is allowed by or provided for in the Agreement, or as limiting any rights or privileges of CESER otherwise allowed by or provided for in the Agreement. The Contractor also agrees to flow down these same provisions to any lower-tier subcontractors.

29. Compliance with Applicable Laws

In addition to its general commitment to comply with all applicable laws, the Contractor specifically agrees to the following requirements, to the extent that such requirements are applicable:



A. to comply with the Civil Rights Act of 1964 and all other Federal, State or local laws, rules and orders prohibiting discrimination. Consistent with the foregoing, Contractor agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations at 41 C.F.R. Part 60;

B. to make positive efforts to utilize small businesses, minority-owned firms and women's business enterprises in connection with the work performed hereunder, whenever possible;

C. to provide for the rights of the Federal Government in any invention resulting from the work performed hereunder, in accordance with 37 C.F.R. Part 401 and any applicable implementing regulations;

D. to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 7401 *et. seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et. seq.*), as amended;

E. to comply with the certification and disclosure requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), and any applicable implementing regulations, as may be applicable, including: 1) certification that Sub-Contractor has not, and will not, use Federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency; a member, officer, or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352; and 2) disclosure of any lobbying with non-Federal funds that takes place in connection with obtaining a Federal award.

F. to certify that neither it, nor any of its principal employees, has been debarred or suspended from participation in Federally-funded contracts, in accordance with Executive Order 12549 and Executive Order 12689, entitled "Debarment and Suspension," and any applicable implementing regulations.

30. Indemnification

Should one party (the "Indemnified Party") incur or suffer any liability, damage, or expense, including reasonable attorney's fees, in connection with the defense of a legal proceeding brought by a third party arising out of the negligent or other wrongful actions of the other party (the "Indemnifying Party"), then the Indemnifying Party shall indemnify and hold harmless the Indemnified Party for such liability, damage, or expense.

31. Survival

Sections 3, 4, 9, 10, 16, 18, 20, 24, 30, and 31 shall survive termination of this the Agreement.

