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## **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 (UI) Pilot Project for Preventing Improper UI Payments by Accessing Financial Institutions' Data for Individuals' Employment Detection**

NASWA-ITSC is seeking vendor(s) who can provide financial transaction data monitoring services, widely employed by banks and payroll services firms for integrity and other reasons, to conduct a pilot project. This project will test the value of using banking payroll deposit transaction and/or payroll payment information from payroll service providers, and commercial employment and income verifiers to detect individuals who are receiving unemployment insurance (UI) benefits and who are also employed. Quick detection will allow for timely follow-up with individuals who may be newly employed. UI claimants who are employed are, generally, no longer eligible for UI.

The goal of this pilot project is to determine whether accessing financial institution and/or payroll service firms' data is cost effective and can significantly reduce the incidence of UI overpayments due to unreported or underreported earnings or from delays in reporting a change in employment status. The contracted vendor(s) will be required to work directly with staff from participating states, the U.S. Department of Labor's (DOL) Employment Training Administration (ETA), and NASWA-ITSC to implement the pilot project. The objective is to provide timely and prompt financial transaction information for the state agency's follow-up with UI claimants to determine whether there is an overpayment of UI benefits, and provide a detailed report of the findings. The RFP consists of the following documents:

### **RFP - Unemployment Insurance (UI) Pilot Project for Preventing Improper UI Payments by Accessing Financial Institutions' Data for Individuals' Employment Detection**

- Attachment A: CESER General Contract Terms and Conditions

**RFP Publication Date:** July 17, 2011

**Bidders Webinar/Teleconference:** July 20, 2011 2:00 PM ET

<http://naswa.webex.com/naswa>

Enter Meeting Number: 641 114 566

Click "Join"

Enter Meeting Password: welcome

**Proposal Due Date:** August 12, 2011



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**Request for Proposal (RFP)**

**For**

**Unemployment Insurance (UI) Pilot Project for Preventing  
Improper UI Payments by Accessing Financial Institutions' Data for  
Individuals' Employment Detection**

**Issued By**

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

**Circulation Date**

July 11, 2011

**Bidders Webinar/Teleconference**

July 20, 2011 – 2:00 PM EDT

<http://naswa.webex.com/naswa>

Enter Meeting Number: 641 114 566

Click "Join"

Enter Meeting Password: welcome

**Proposal Submission Date**

August 12, 2011

# UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection

## 1. Project Description

NASWA-ITSC is seeking vendor(s) who can provide financial transaction data monitoring services, widely employed by banks and payroll services firms for integrity and other reasons, to conduct a pilot project. This project will test the value of using banking payroll deposit transaction and/or payroll payment information from payroll service providers, and commercial employment and income verifiers to detect individuals who are receiving unemployment insurance (UI) benefits and who are also employed. Quick detection will allow for timely follow-up with individuals who may be newly employed. UI claimants who are employed are, generally, no longer eligible for UI.

The goal of this pilot project is to determine whether accessing financial institution and/or payroll service firms' data is cost effective and can significantly reduce the incidence of UI overpayments due to unreported or underreported earnings or from delays in reporting a change in employment status. The contracted vendor(s) will be required to work directly with staff from participating states, the U.S. Department of Labor's (DOL) Employment Training Administration (ETA), and NASWA-ITSC to implement the pilot project. The objective is to provide timely and prompt financial transaction information for the state agency's follow-up with UI claimants to determine whether there is an overpayment of UI benefits, and provide a detailed report of the findings.

## 2. Project Background

In Fiscal Year 2010, UI claimants who continued to claim and receive UI benefits after returning to work accounted for over \$2 billion in improper payments. These so-called Benefit Year Earnings (BYE) improper payments represented nearly 30 percent of total overpayments. To reduce this type of improper payment, states need access to data sources that will detect when claimants are working at the earliest possible time.

Generally, UI claimants must certify that they meet the eligibility requirements weekly/biweekly, and must report any work and earnings for the week(s). States will accept the individuals' attestation. However, state agencies employ various methods to detect improper payments such as conducting data matches with the National Directory of New Hires (NDNH), and the state's quarterly wage files submitted by employers who must report wages to the state for UI program purposes. States use these databases to identify potential BYE violations. Although these databases are quite useful in detecting potential BYE violations, there is a lag of an average of 37 days for the NDNH and three months for the quarterly wage database; 50 percent of BYE violations are for five weeks or less. ETA is seeking faster methods/tools that will allow states to quickly detect those claimants who have returned to work and continue to receive UI benefits. Timely detection of potential eligibility issues allows states to intervene quickly to prevent improper payment errors.

## **UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection**

ETA engaged NASWA-ITSC to initiate this pilot project with three selected states, Maryland, Texas, and Utah each of which is interested and suited to participate in this pilot project. These states can also implement the necessary technical infrastructure and business processes to receive financial transaction records from financial transaction monitoring services that are widely employed by banks to detect individuals that have payroll deposits and/or payroll payment information from payroll service firms, and commercial employment and income verifiers. This process should also allow for the detection of individuals who are receiving UI benefits and who are also employed and earning full or partial wages and to evaluate the cost effectiveness of detecting potential overpayments.

The funding for this pilot project was awarded to the DOL by the Office of Management and Budget's (OMB) Partnership Fund for Program Integrity Innovation (Partnership Fund). Established in FY 2010, the Partnership Fund supports pilot projects to streamline administration and strengthen program integrity in Federal assistance programs administered in cooperation with the states.

### **3. 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 DOL to assist all state UI agencies in the area of UI Information Technology (IT), <http://itsc.org/>.

**The Office of Unemployment Insurance**, ETA, DOL is responsible for providing: leadership, direction and technical assistance to state workforce agencies in the implementation and administration of UI programs; oversight, guidance, and technical assistance 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.

### **4. 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

## **UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection**

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 unemployment insurance claims are established.

### **4.1 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.

### **4.2 Filing an Initial UI Benefit Claim**

Individuals are 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 now lives 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.

### **4.3 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.

Often, 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

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equal the difference between the weekly benefit amount and earnings. All states disregard some earnings as an incentive 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.

### **4.3.1 Continued Weekly Benefit Eligibility**

An individual must file a weekly or biweekly claims certification at the end of a week 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, an individual 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 in the previous section.

## **5. Statement of Work**

**This RFP is divided into two parts; Part A describes the process and expectations for establishing an exchange of data between the pilot states and the selected vendor: Part B describes the technical assistance and support required from the vendor to accomplish Part A. Prospective vendors should describe how they will carry out each Part, and the associated costs.**

The goal of this pilot project is to determine whether accessing financial institution or payroll services firm data can rapidly identify the individuals receiving UI benefits while also being employed.

This initiative should determine whether the proposed system accomplishes the detection of BYE errors more rapidly than current detection tools used by the states. The data will be used by the pilot states to follow-up with targeted beneficiaries to validate the findings of the match and estimate administrative costs and potential savings from reduced overpayments. The potential savings can be estimated by determining the detection date under this initiative, and comparing it to the earliest detection date that would have been possible using current detection tools. The

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difference in the dates multiplied by the amount of benefits paid would equal the potential improper payment reduction amount using this new tool(s).

The vendor selected through this RFP will take claimant SSN lists provided by the pilot states and return these lists to the pilot states scored with information. The scoring should indicate the degree of confidence that the vendor has that the information provided has identified UI beneficiaries who are likely employed during the same period of time that they are certifying for UI benefits.

**Part A:** States will develop an appropriate extract file from their benefit payment system, successfully transmit this file to a vendor who can match and provide an analysis of institutional deposit data and provide an analysis (ranking) of the type of deposit, and transmit that back to the pilot state. The transfer of data for pilot operations will proceed for three months.

All files will be encrypted and transmitted by a secure transmission system.

The vendor should demonstrate the following capabilities:

1. Structure, and ability to enter into a data confidentiality agreement with each pilot state,
2. Clear ability and understanding of how to effectively transfer data from pilot states, e.g., by, flat file by SFTP, web service transaction, or other method,
3. Ability to receive and secure claimant extract file from pilot states,
4. Access to appropriate financial institution (s) and/or payroll service (s) to identify individuals who have deposit activity in their accounts,
5. Ability to provide timely data matches for the state extract files, at a minimum of one per day. Vendor should propose the most timely and efficient process it can deliver,
6. Ability to provide a clear interpretation of the output financial transaction hits based on the input file to the pilot states in an efficient and timely manner. (Pilot states should have the capability to access and receive financial institution and/or payroll service firm data such as individual payroll deposit records and other identifying information for UI claimants in an on-line inquiry interface and/or in batch mode.),
7. Ability to participate in regular conference calls to assess project progress and address any issues, and
8. Ability to scale the pilot system to support all 53 State Workforce Agencies (Fifty states plus Puerto Rico, Virgin Islands and DC) following the completion of the pilot.

## **UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection**

**Part B:** will be to provide technical assistance to ITSC and the pilot states. The vendor will be required to provide assistance for implementing the technical requirements for financial transaction matching services. The technical assistance services will include:

- 1) Assessing state hardware/infrastructure requirements including data file exchange delivery mechanisms,
- 2) Understanding and aligning input/output file formats for the data exchange from the state agencies to the vendor for matching,
- 3) Technical documentation and assistance for troubleshooting, testing and production operations,
- 4) Training package (s) for the participating states to gain an understanding of banking rules and/or appropriate regulations,
- 5) Participation in conference calls to provide project status and technical assistance, and
- 6) Working with ITSC and ETA in hosting meetings/conference calls to assess technical requirements and to provide assistance to the participating pilot states. Project kick off and finalization meeting(s) may be in-person meetings held in Washington, D.C. These sessions will be used to assess and document all requirements, and plan the needed technical assistance for the project.

### **6. Deliverables**

The following is a minimum list of expected project deliverables; however, respondents are free to suggest additional deliverable as part of their proposal:

#### **PART A:**

- 1) Project plan which contains, at a minimum, the list of deliverables and a clear description of how they will be met, along with a description of the process to exchange the state claimant extract file and the vendor scored file, including any possible differences between the three partner states,
- 2) Fully executed confidentially agreements with each pilot state,
- 3) A complete list of all financial institutions that will be utilized for data matching by the vendor,
- 4) A clear description of the protocol to be used by pilot states to prepare and transmit state date file,
- 5) The file formats of each file used, together with descriptions of each field,

## **UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection**

- 6) A description on how data matches will be accomplished, and
- 7) A file (weekly or daily) of data for UI beneficiaries identified most likely to have received a payroll payment to each participating pilot state, for the three month pilot period. The data should include scoring information and how scoring was accomplished, indicating the degree of confidence that a payroll payment was made to the identified UI beneficiaries. Vendor should indicate how this data can be used to meet the intent of the pilot project. Vendor should also indicate other variables that may be possible to include such as: payer name, FEIN, amount, and date of payment.

### **PART B:**

- 1) Technical and cost assessment of hardware/software infrastructure and security requirements. A secure network connection will be expected if there is a direct data exchange between the state and vendor systems,
- 2) Technical documentation on the input/output data exchange formats,
- 3) Timely technical assistance for troubleshooting, testing and production operations,
- 4) A training package for the use of the participating states to understand banking law and regulations,
- 5) Participation in status meetings, conference calls and other technical presentations with the project stakeholders, and
- 6) A final report on the pilot, including analysis of all data, hits, and comparison with hits from other state systems should these be available within the period of performance of the pilot.

All documentation collected and created by the selected vendor for this project will be stored on the NASWA/ITSC SharePoint portal. This includes meeting notes, work-in-progress materials, drafts and final approved deliverables. All materials created or captured for use on this project immediately become the property of NASWA-ITSC

### **6. Estimated Project Timeline**

The period of performance for the setup and execution of the pilot is September 12, 2011 through March 31<sup>st</sup>, 2012.

# UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection

## Proposal Structure:

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

Required Response Outline		
Section Number	Section Title	Section Content
1	Executive Summary	Summarize the RFP response; (Max 3 pages)
2	RFP Response	Describe the proposed solution and project management process. (Max 10 pages)
3	Previous project references	Provide up to three examples of other similar projects related to the SOW.
4	Terms and Conditions	Acceptance of Terms and Conditions (Attachment A)
5	Cost Estimates	Each response should include a price breakdown of the proposed solution. Pricing should be itemized to support the prior assumptions in this section.
6	Additional Information	Confidentiality requirements and other information the vendor deems appropriate

## 7. 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.

## 8. Assumptions

### PARTS A & B

**Unemployment Insurance:** The selected contractor is not expected to be an expert in Unemployment Insurance. The states, NASWA/ITSC and DOL staff will provide the subject matter expertise for this project.

**Project Management Coordination:** NASWA/ITSC will provide overall project management coordination between the vendor, three pilot states (MD, TX, UT) and DOL; however the vendor must have expertise in systems integration projects to support and advise NASWA-ITSC as required.

**Site Visits to Partner States:** NASWA/ITSC will partner with MD, TX and UT for this pilot effort. All responding vendors must include pricing that incorporates the costs of providing matching financial institution data, remote and at least one on-site technical assistance visit, to

## UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection

each participating state and all associated costs for documentation. These costs should be itemized in case more or less on-site visits become required.

The table below provides, by size of a state, the potential number of records that could be sent to the vendor for cross matching on a monthly (Qtr./3) and weekly basis (Qtr./13).

Potential # of records for cross match by pilot state		
State	CY 2011 Quarter 1 Weeks Compensated	CY 2010 Annual Weeks Compensated
Texas	2,133,398	9,835,328
Maryland	755,131	2,919,618
Utah	308,354	1,228,540

**On-site Sessions:** Two on-site meetings may be required, and will be held in Washington, D.C. Coordination of both the facilities and state personnel travel will be arranged by NASWA/ITSC. Any additional meetings determined to be required by the vendor can be proposed and may be conducted virtually or in person.

**Schedule:** The selected vendor will provide schedule and progress updates to NASWA/ITSC for inclusion in the overall project schedule and meet all of the deliverables and dates in accordance with the plan and schedule submitted.

**Project Repository:** The official project repository for all materials captured or created during this project is the NASWA/ITSC SharePoint portal. NASWA/ITSC will provide the selected vendor with the appropriate access to its SharePoint portal environment. NASWA/ITSC owns all materials captured or created as soon as they are captured or created by any party.

**Confidentiality Agreement:** The vendor will execute a confidentiality agreement with the pilot states which meets each states requirement.

### 9. 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

## UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection

### 10. 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 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  
**Joe.Vitale@itsc.org**

### 11. Basis for Award of Contract

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

- 1) Adherence to RFP Instructions.
- 2) Overall Quality of Proposal.
- 3) Company or organization Information, including (but not limited to):
  - a) Size of company, or organization,
  - b) Percent share of the national financial institution data that the vendor can provide access to,
  - c) Length of time in business,
  - d) Experience with similar projects including examples of relevant past projects and other appropriate documentation,
  - e) Experience of proposed project team, and
  - f) Description of any sub-contractors proposed for use on this project and the vendors past experience with them.
- 4) Solution, including (but not limited to):
  - a) Project understanding and proposed solutions,
  - b) Demonstrated ability to meet all Deliverables,
  - c) Vendor demonstrations of past projects and/or client references, and
  - d) Cost Summary:
    - 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, and
    - Indirect rates.

## **UI Pilot Project for Accessing Financial Institutions' Data for Employment Detection**

- 5) Project Management, including (but not limited to):
  - a) Project management plan, following the ITSC annotated outline to be provided,
  - b) Project schedule showing Initiate/Plan/Execute/Monitor-Control/Close stages created using Microsoft Project, and
  - c) Project status reports that will be provided to the CESER-ITSC project manager.

Successful completion of this pilot project may lead to a broader implementation of the demonstrated activities. Potential vendors should describe the vendors understanding and necessary technical infrastructure to expand the data matching to include all 53 state workforce agencies upon successful completion of the pilot if approval is obtained from the government.



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

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## **CESER General Contract Terms and Conditions**

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#### **Clause**

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**Attachment A**  
**CESER General Contract 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.

