

**To: Contract & Grants Officers**

**Subject: Certification of State Darfur Contracting Act**

**Background**

In September, 2008, the State Governor signed the [Darfur Contracting Act, AB498](#). This legislation prohibited a “scrutinized company” involved in specified activities in Sudan, as defined in the Act, from entering into a contract with a State agency for goods or services. The legislation also required prospective bidders for such State contracts that currently or within the previous 3 years have had business activities or other operations outside of the United States, to certify that it is not a “scrutinized company.”

The Darfur Contracting Act of 2008 is implemented via State [Public Contract Code \(PCC\) sections 10475-10481](#). PCC section 10476 defines a “scrutinized company” as:

..... a company in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company that can demonstrate any of the following:

- (a) Its business operations are conducted under **contract** directly and exclusively with the regional government of southern Sudan.
- (b) Its business operations are conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under federal law from the requirement to be conducted under such a license.
- (c) Its business operations consist of providing goods or services to marginalized populations of Sudan.
- (d) Its business operations exclusively consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization.
- (e) Its business operations consist of providing goods or services that are used only to promote health or education.
- (f) Its business operations with the Government of Sudan will be voluntarily suspended for the entire duration of the **contract** for goods or services for which they have bid on, or submitted a proposal for, a **contract** with a state agency.
- (g) It has adopted, publicized, and is implementing a formal plan to cease business operations within one year and to refrain from conducting any new business operations.

A contractor with a State agency may receive a Darfur Contracting Act certification in a State contract in which the contractor must certify whether or not it is a scrutinized company based on the above definitions. A sample of such a certification is attached to this Memo.

### **Guidance**

As an entity of the State, the University generally does not receive contracts from State agencies. Agreements between State agencies and the University are usually interagency agreements. Such agreements recognize the University as a State entity and do not require the Darfur Contracting Act certification. However, some State agencies provide the University with contracts which may include this certification. The State Department of General Services has verbally confirmed that the University is not required to sign this certification. However, because this opinion is not in writing, some State agency contracts may require it.

In order not to delay State contract negotiations over the applicability of this certification to the University, University General Counsel's Office has provided guidance that, when there is no option to delete this certification from a contract, Contract Officers may initial the third option on the form and sign it. This option states:

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

If possible, General Counsel has added that Contract Officers should add the following statement to this form:

#### ***CALIFORNIA STATE ENTITY***

Notwithstanding anything to the contrary in this Agreement, the provisions of this certification are enforceable only to the extent such provisions are applicable to a California state entity and constitutional corporation and are required by applicable law.

If not added to the certification itself, this statement could be included in a cover letter.

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**Attachment: Sample Darfur Contracting Act Certification**