



# County of Santa Cruz

## HEALTH SERVICES AGENCY

701 OCEAN STREET, ROOM 312, SANTA CRUZ, CA 950694073

(831) 454-2022 FAX: (831) 4543128 TDD: (831) 4544123

ENVIRONMENTAL HEALTH

July 31, 2000

AGENDA: August 22, 2000

### BOARD OF SUPERVISORS

County of Santa Cruz

701 Ocean Street

Santa Cruz, CA 95060


### SUBJECT: CONTRACT FOR PUBLIC BEACH MONITORING AND POSTING

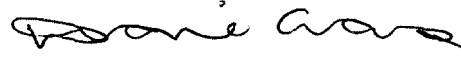
Members of the Board:

The Environmental Health Services (EHS) has, for some time, had an active program of monitoring ocean water quality at public beaches and posting of unsafe conditions. State legislation (AB 411) has increased the requirements for frequency and location of sampling, the tests used, and the necessity for posting, resulting in increased costs to EHS. AB 411 provided funding from the State to help meet these increased costs through a contract reimbursement program. The reimbursement from the State was anticipated in preparation of EHS's approved 2000-01 budget. The Health Services Agency is now recommending that your Board approve the agreement with the State. The term of the contract is July 1, 2000, through June 30, 2003. The amount reimbursable annually is up to \$22,100.

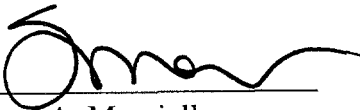
It is therefore RECOMMENDED that your Board authorize the Health Services Agency Administrator to sign the Standard Agreement (on file with the Clerk of the Board) with the State of California for reimbursement of costs associated with mandated beach ocean water monitoring and beach posting.

Sincerely

*for*  m. D.  
Rama Khalsa, Ph.D.  
Health Services Agency Administrator

  
Diane Evans, REHS  
Environmental Health Director

RECOMMENDED

A handwritten signature in black ink, appearing to read 'Susan', is written over a horizontal line.

Susan A. Mauriello  
County Administrative Officer

cc: CA.0  
County Auditor  
County Counsel  
Health Services Agency  
Environmental Health

COUNTY OF SANTA CRUZ  
REQUEST FOR APPROVAL OF AGREEMENT

0285

TO: Board of Supervisors  
County Administrative Officer  
County Counsel  
Auditor-Controller

FROM: Health Services Agency (Dept.)  
*David McQuinn* (Signature) 8-4-00 (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

1. Said agreement is between the Santa Cruz County Health Services Agency (Agency)  
and, Calif. Dept. of Health Services, 601 N. 7th St., MS396, Sacramento, CA 95814 (Name & Address)
2. The agreement will provide Funding for costs of ocean water quality monitoring  
and beach posting.
3. The agreement is needed to provide for the reimbursement of costs associated with performing  
the above activities.
4. Period of the agreement is from July 1, 2000 to June 30, 2003
5. Anticipated cost is \$ 22,100 Annually (Fixed amount; Monthly rate; Not to exceed)
6. Remarks: \_\_\_\_\_
7. Appropriations are budgeted in Revenue Account 362860 (Index#) 0872 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and have been encumbered.  
are not will be

Contract No. R-740 Date 8/8/00

GARY A. KNUTSON, Auditor - Controller

By Ronald J. Nelson Deputy.

Proposed reviewed and approved. it is recommended that the Board of Supervisors approve the agreement and authorize the  
\_\_\_\_\_ to execute the same on behalf of the \_\_\_\_\_

\_\_\_\_\_ (Agency).

Remarks: \_\_\_\_\_

CS (Analyst)

County Administrative Officer

By John G. ... Date 8/4/02

Agreement approved as to form. Date \_\_\_\_\_

Distribution:

Bd. of Supv. - White  
Auditor-Controller - Blue  
County Counsel - Blue  
Co. Admin. Officer - Canary  
Auditor-Controller - Pink  
Originating Dept. - Goldenrod

To Orig. Dept. if rejected.

ADM - 29 (6/95)

State of California )  
County of Santa Cruz ) ss

I \_\_\_\_\_ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,  
State of California, do hereby certify that the foregoing request for approval of agreement was approved by  
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered  
in the minutes of said Board on \_\_\_\_\_

\_\_\_\_\_ 19 \_\_\_\_\_ By \_\_\_\_\_ Deputy Clerk

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## STANDARD AGREEMENT

STD. 2 (REV. 591)

CMS

APPROVED BY THE  
ATTORNEY GENERAL

MASTER COPY

CONTRACT NUMBER <b>00-90624</b>	AM. NO.
TAXPAYER'S FEDERAL ID. NUMBER <b>94-6000-534</b>	

THIS AGREEMENT, made and entered into this 1st day of July, 2000 in the  
State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE

AGENCY

Chief, Program Support Branch

Department of Health Services

, hereafter called the State, and

CONTRACTOR'S NAME

County of Santa Cruz

, hereafter called the Contractor.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed,  
does hereby agree to furnish to the State services and materials as follows: *(Set forth services to be rendered by Contractor, amount to be paid Contractor,  
time for performance or completion, and attach plans and specifications, if any.)*

This agreement is entered into by and between the Department of Health Services (DHS), Environmental Management  
Branch, and the County of Santa Cruz Agency (the County). The following terms and conditions shall apply to this  
agreement.

## A. Term of Contract:

The term of this agreement shall be from July 1, 2000 through June 30, 2003.

B. In accordance with Section 115880 of the Health and Safety Code, DHS shall by regulation, in consultation with local  
officers and the public, establish minimum standards for the sanitation of public beaches, including but not limited to,  
the removal of refuse, as it determines are reasonably necessary for the protection of the public health and safety.

CONTINUED ON 9 SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA		CONTRACTOR	
AGENCY Department of Health Services	CONTRACTOR (if other than an individual, state whether a corporation, partnership, etc.) Santa Cruz County		
BY (AUTHORIZED SIGNATURE) For	BY (AUTHORIZED SIGNATURE) <i>David R. McHatt, MD</i> for		
PRINTED NAME OF PERSON SIGNING Edward Stahlberg	PRINTED NAME OF AND TITLE OF PERSON SIGNING Rama K h a l s a Health Services Agency Administrator		
TITLE Chief, Program Support Branch	ADDRESS 701 Ocean Street, Room 3 12 Santa Cruz, CA 95060		
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 22,100	PROGRAM / CATEGORY (CODE AND TITLE) Local Assistance	FUND TITLE General	
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$	(OPTIONAL USE)		
	ITEM 4260-00 1	CHAPTER 52	STATUTE 2000
	FISCAL YEAR 2000/01		
TOTAL AMOUNT ENCUMBERED TO DATE \$ 22,100	OBJECT OF EXPENDITURE (CODE AND TITLE) 4405-51212-418-02		
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T.B.A. NO.	B.R. NO.
SIGNATURE OF ACCOUNTING OFFICER I>		DATE	

Department of General  
Services Use Only

Exempt From DGS Approval Per  
DGS Exemption Notice #55.2

☐ CONTRACTOR ☐ STATE AGENCY ☐ DEPT. OF GEN. SER. ☐ CONTROLLER ☐

**STANDARD AGREEMENT**

STD. 2 (REV. 5-91) (REVERSE)

0287

1. The contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract.
2. The Contractor, and the agents and employees of Contractor, in the performance of the agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.
3. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the State may proceed with the work in any manner deemed proper by the State. The cost to the state shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon demand.
4. Without the written consent of the State, this agreement is not assignable by Contractor either in whole or in part.
5. Time is the essence of this agreement.
6. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
7. The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

1. DHS shall require the testing of the waters adjacent to all public beaches for microbiological contaminants, including but not limited to, total coliform, fecal coliform, and enterococci bacteria. DHS may require the testing of waters adjacent to all public beaches for microbiological indicators other than those set forth in this paragraph, or a subset of those set forth in this paragraph, if DHS affirmatively establishes, based on the best available scientific studies and the weight of the evidence that the alternative indicators are as protective of the public health.
2. DHS shall establish protective minimum standards for total coliform, fecal coliform, and enterococci bacteria, or for other microbiological indicators that DHS determines are appropriate for testing pursuant to paragraph 1.
3. DHS shall establish protocols for all of the following:
  - a. Determining monitoring site locations and monitoring frequency based on risks to public health.
  - b. Making decisions regarding public notifications of health hazards, including, but not limited to the posting, closing, and reopening of public beaches.
4. DHS shall require that the waters adjacent to public beaches be tested for total coliform, fecal coliform, and enterococci bacteria, or for other microbiological indicators that DHS determines are appropriate for testing pursuant to paragraph 1. Except as set forth in paragraph 5, testing shall be conducted on at least a weekly basis, from July 1 to October 31 and April 1 to June 30, inclusive, of each fiscal year, beginning in 2000, if all of the following apply:
  - a. The beach is visited by more than 50,000 people annually.
  - b. The beach is located in an area adjacent to a storm drain that flows in the summer.
5. The monitoring frequency and locations established pursuant to this subdivision and related regulations may only be reduced or altered after the testing required pursuant to paragraph 4 reveals levels of microbiological contaminants that do not exceed, for a period of two years, the minimum protective standards established pursuant to paragraph 2.

- C. The County shall be responsible for testing the waters adjacent to, and coordinating the testing of all public beaches within the County's jurisdiction.

- D. The County may meet the testing requirements of this section by utilizing test results from other agencies conducting microbiological contamination testing of the waters under its jurisdiction.
- E. For purposes of this section “public beach” means any public beach located within the coastal zone, as defined in Section 30103 of the Public Resources Code.

In accordance with Section 115885 of the Health and Safety Code, the County, having jurisdiction over the area in which a public beach is created shall:

- A. Inspect the public beach to determine whether the standards established pursuant to Section 115880 are being complied with. If the County finds any violation of the standards, the County may restrict the use of, or close, the public beach or portion thereof in which the violation occurs until the standard is complied with.
- B. Investigate any complaint of a person of a violation of any standard established by DHS pursuant to Section 115880. If the County finds any violation of the standards prescribed by DHS, the County may restrict the use of, or close, the public beach or portion thereof until the standard is complied with. If the person who made the complaint is not satisfied with the action taken by the County, he or she may report the violation to DHS. DHS shall investigate the reported violation, and, if it finds that the violation exists, it may restrict the use of or close the public beach or portion thereof until the standard violated is complied with.
  - 1. Whenever a beach is posted, closed, or otherwise restricted in accordance with Section 115915, the County shall inform the agency responsible for the operation and maintenance of the public beach within 24 hours of the posting, closure, or restriction.
  - 2. The County shall establish a telephone hotline to inform the public of all beaches within its jurisdiction currently closed, posted, or otherwise restricted. The hotline shall be updated as needed in order to convey changes in public health risks.
- C. Report any violation of the standards established pursuant to Section 115880 to the district attorney, or if the violation occurred in a city and, pursuant to Section 41803.5 of the Government Code, the city attorney is authorized to prosecute misdemeanors, to the city attorney.
- D. In the event of a known untreated sewage release, the County shall immediately test the waters adjacent to the public beach and take action pursuant to regulations established under Section 115880.

- E. Notwithstanding any other provision of law, in the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, the County shall immediately close those waters until it has been determined by the County that the waters are in compliance with the standards established pursuant to Section 115880.
- F. Any duty imposed upon the County pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs of those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

In accordance with Section 115915 of the Health and Safety Code:

- A. Whenever any beach fails to meet the bacteriological standards established pursuant to subdivision (b) of Section 115880, the County shall, at a minimum, post the beach with conspicuous warning signs to inform the public of the nature of the problem and the possibility of risk to the public health.
- B. A warning sign shall be visible from each legal primary beach access point, as identified in the coastal access inventory prepared and updated pursuant to Section 3053 1 of the Public Resources Code, and any additional access points identified by the County.
- C. In consideration of the above services performed in a manner acceptable to DHS, DHS shall reimburse the County in accordance with Exhibit A upon receipt of an itemized invoice to Connie Zakaria, Division of Drinking Water & Environmental Management, MS 396, P. O. Box 942732, Sacramento, CA 94234-7320.
- D. The terms of this agreement shall be from July 1, 2000 through June 30, 2003. Subject to the provisions of article 1, LIMITATION OF STATE LIABILITY, and article 2, FUNDING REDUCTION IN SUBSEQUENT YEARS, the maximum amount payable shall not exceed the following amounts (see Exhibit A for a detailed cost breakdown):
  - 1. Limitation of State Liability (for multi-year contracts only)
    - a. \$22,100 for the 2000/01 Fiscal Year (July 1, 2000 -June 30, 2001).
    - b. \$22,100 for the 2001/02 Fiscal Year (July 1, 2001 – June 30, 2002).



- c. \$22,100 for the 2002/03 Fiscal Year (July 1, 2002 – June 30, 2003).
  - d. The maximum amount payable under this agreement shall not exceed \$22,100 annually.
  - e. The maximum amount payable under this agreement shall not exceed \$66,300 for the entire contract term.
  - f. Payment for performance by the Contractor be dependent upon the availability of future appropriations by the Legislature for the purposes of this contract. No legal liability on the part of the State for any payment may arise under this agreement until funds are made available and until the Contractor has received notice of funding availability, which will be confirmed in writing.
2. Funding Reduction in Subsequent Fiscal Years (for multi-year contracts only)
- a. If funding for any fiscal year is reduced or deleted by the legislature, for purposes of this Program, the State shall have the option to either:
    - 1) cancel this agreement pursuant to Article 14, the 30-day cancellation clause, or
    - 2) offer an amendment to the County to reflect the reduced funding for this agreement.
  - b. In the event DHS elects option a.2) above, it shall be mutually understood by both parties that DHS reserves the right to determine which agreements, if any, under this program shall be reduced, and DHS shall determine at its sole discretion the amount that any or all agreements shall be reduced and for which fiscal year.
  - c. DHS reserves the right to use its sole discretion to determine which agreement shall be reduced and to elect the right to reduce some agreements by a greater amount than others for the same program.
3. A final undisputed invoice shall be submitted for payment no more than ninety calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is negotiated and agreed upon in writing by the DHS contract manager. Said invoice should be clearly marked "Final Invoice", to indicate that all payment obligations of DHS under this agreement have ceased and that no further payments are due or outstanding.

4. DHS, at its discretion, may elect not to honor any delinquent final invoice if the County fails to obtain prior written DHS approval of an alternate final invoice submission deadline. Written approval shall be sought from the DHS contract manager prior to the expiration or termination date of this agreement.
5. The County is hereby advised of its obligation to submit, with the final invoice, a Contractor's Release Form (attached as Exhibit B and consisting of one page) acknowledging submission of the final invoice to DHS and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.
6. The County represents and warrants fault-free performance in processing of date and date related data (including but not limited to, calculating, comparing, and sequencing) by all hardware, software, and firmware products delivered and used under this agreement, individually and in combination upon installation. Fault-free includes the manipulation of this data with dates prior to, through and beyond June 30, 2003, and shall be transparent to the user:
7. This agreement may be cancelled by either party upon submission of 30 days written notification.
8. The attached Exhibit A, entitled Detailed Costs, consisting of three pages, is to be made a part hereof by this reference.
9. The attached Exhibit A(S), entitled Additional Provisions (For State Funded Subvention Aid/Local Assistance Cost Reimbursement Contracts/Grants), consisting of 14 pages, is to be made a part hereof by this reference.
10. The attached Exhibit B, entitled Contractor's Release, consisting of one page, is to be made a part of this agreement by this reference.
11. The Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

### **Exhibit A - Detailed Costs**

County of Santa Cruz  
Health Services Agency

Budget for FY 2000/2001  
7/1/00-10/31/00

Salaries & Benefits	\$10,423
Overhead	1,042
Services & Supplies	<u>1,200</u>
Total for this period	\$12,665

Budget for FY 2000/2001  
-4/1/01-6/30/01

Salaries & Benefits	\$ 7,486
Overhead	749
Services & Supplies	<u>1,200</u>
Total for this period	<u>\$, 4 3 5</u>

TOTAL FOR FY 2000/01      \$22,100

### **Exhibit A - Detailed Costs**

County of Santa Cruz  
Health Services Agency

Budget for FY 2001/2002  
7/1/01-10/31/01

Salaries & Benefits	\$10,423
Overhead	1,042
Services & Supplies	<u>1,200</u>
Total for this period	\$12,665

Budget for FY 2001/2002  
4/1/02-6/30/02

Salaries & Benefits	\$ 7,486
Overhead	749
Services & Supplies	<u>1,200</u>
Total for this period	<u>\$ 9,435</u>

TOTAL, FOR FY 2001/02      \$22,100

### **Exhibit A - Detailed Costs**

County of Santa Cruz  
Health Services Agency

Budget for FY 2002/2003  
7/1/02-10/31/02

Salaries & Benefits	\$10,423
Overhead	1,042
Services & Supplies	<u>1,200</u>
Total for this period	\$12,665

Budget for FY 2002/2003  
4/1/03-6/30/03

Salaries & Benefits	\$ 7,486
Overhead	749
Services & Supplies	<u>1,200</u>
Total for this period	<u>\$9,435</u>

TOTAL FOR FY 2002/03	\$22,100
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## CONTRACTOR'S RELEASE

0296

Exhibit B

### Instructions to Contractor:

With final invoice(s) submit one (1) original and two (2) copies. The original must bear the original signature of a person authorized to bind the Contractor. The additional copies may bear photocopied signatures.

### Submission of Final Invoice

Pursuant to **contract number** \_\_\_\_\_ entered into between the State of California Department of Health Services and the Contractor (identified below), the Contractor does hereby acknowledge that final payment has been requested via **invoice number(s)** \_\_\_\_\_, in the **amount(s) of \$** \_\_\_\_\_ and **dated** \_\_\_\_\_. If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

### Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

### Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment, will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

### Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that [Enter "**percentage value**" or "**zero**"] \_\_\_\_\_ percent of the materials, goods, supplies or products offered or used in the performance of the above referenced contract meets or exceeds the minimum percentage of recycled material, as defined in Public Contract Code Sections 12161 and 12200.

### Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHS or purchased with or reimbursed by contract funds)

Unless DHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHS agreement, Contractor agrees to **promptly** initiate arrangements to account for and return said equipment to DHS, at DHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

### Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

Contractor's Legal Name (As on contract): \_\_\_\_\_

Signature of Contractor or Official Designee: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name/Title of Person Signing: \_\_\_\_\_

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**DLS Distribution:** Accounting (Original) Program CMU contract file

STATE OF CALIFORNIA  
DEPARTMENT OF HEALTH SERVICES

**ADDITIONAL PROVISIONS**

**(FOR STATE FUNDED SUBVENTION AID/LOCAL ASSISTANCE  
COST REIMBURSEMENT CONTRACTS/GRANTS)**

**1. TRAVEL AND PER DIEM**

Any reimbursement for necessary travel and per diem shall be at rates currently in effect, as established by the Department of Personnel Administration, for similar state employees. Exceptions to these rates may be approved by the State upon the verification of a statement **submitted** by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

**2. PURCHASING/PROCUREMENT RULES**

- a. Units of local government and public entities (including the Universities of California and California State University and auxiliary organizations/foundations thereof) and state and federal agencies, whether acting as a contractor and/or subcontractor, may use their existing procurement systems to secure **all** articles, supplies, equipment (e.g., *nonexpendable items with a unit cost of \$500 or more and a useful life expectancy of four or more years, including EDP/ADP, telecommunications, and motor vehicles*) and services related to such purchases that are required in performance of this contract, without **regard to dollar limit**, subject to the provisions in paragraphs e through i of this section. *The provisions in paragraphs b, c, and d of this section may also apply, if purchases are subdelegated to subcontractors that are nonprofit organizations, for-profit entities or private vendors.*
- b. All other entities (nonprofit organizations, for-profit entities, or private vendors) may use their existing procurement systems to secure articles, supplies, equipment (e.g., *nonexpendable items with a unit cost of \$500 or more and a useful life expectancy of four or more years, including EDP/ADP, telecommunications, and motor vehicles*) and services related to such purchases that are required in performance of this contract. Equipment procurement shall not exceed **an annual maximum** limit of **\$50,000**, subject to the provisions stipulated in paragraphs c through i of this section. *The provisions in paragraph a of this section may also apply, if purchases are subdelegated to subcontractors that are units of local government, public entities, state or federal agencies.*
- c. All other entities (nonprofit organizations, for-profit entities, or private vendors), whether acting as a contractor or subcontractor, shall use procurement systems that meet the following standards:
  - (1) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.
  - (2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(3) Procurements shall be conducted in a manner that provides for all of the following:

- (a) Avoidance of the purchasing of unnecessary or duplicate items.
- (b) Solicitations for capital expenditures (equipment) shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
- (c) The taking of positive steps to utilize small, minority, women or veteran owned businesses.
- d. To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements, through the appropriate Department of Health Services (DHS) program contract manager, to have all remaining equipment purchased through the DHS Purchasing Unit by way of the Department of General Services, Office of Procurement. The cost of equipment purchased by or through the State shall be deducted from the funds available in this contract. Contractor shall submit to the DHS Purchasing Unit a list of **equipment** specifications for those items that the State must purchase. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with the State. The equipment will be delivered to the Contractor's address, as stated on the face of the contract, unless the Contractor notifies the State, in writing, of an alternate delivery address.
- e. Prior written authorization from the DHS program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for articles, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by the State, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- f. In special circumstances, defined by the State, the State may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. The State reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or Subcontractor purchase that the State determines to be unnecessary in carrying out performance under this contract.
- g. The Contractor and/or Subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this contract. The State reserves the right to request copies of these documents and to inspect the purchasing practices of the Contractor and/or Subcontractor at any time.
- h. For all purchases, the Contractor and/or Subcontractor must maintain copies of all paid vendor receipts, documents, bids, and other information used in vendor selection, for inspection or audit by the State. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or Subcontractor for inspection or audit by the State.
- i. The State may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under paragraphs a and/or b of this section, by giving the Contractor no less than 30 calendar days written notice.

**3. OWNERSHIP/DISPOSITION/INVENTORY OF EQUIPMENT PURCHASED/REIMBURSED WITH CONTRACT FUNDS OR FURNISHED BY THE STATE**

- a. All equipment of any kind, as defined in section 3, paragraph a, purchased/reimbursed with contract funds or furnished by the State under the terms of this contract and not fully



consumed in performance of this contract shall be considered state equipment and property of the State.

- b. **Title** to state equipment shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, the State shall not be under obligation to pay the cost of restoration, or rehabilitation of the **Contractor's** and/or Subcontractor's facility which may be affected by the removal of any state equipment.
- d. The Contractor and/or Subcontractor shall maintain and administer, according to state directives and sound business practices, a program for the proper use, maintenance, repair, protection, insurance, and preservation of state equipment.
- e. Equipment, as defined in section 3, paragraph a, purchased/reimbursed with contract funds or furnished by the State under the terms of this contract, shall only be used for performance of this contract.
- f. The Contractor shall submit an annual inventory of equipment, as defined in section 3, paragraph a, purchased/reimbursed with contract funds or furnished by the State under the terms of this contract. include in that inventory, said equipment in the Contractors possession and/or in the possession of a subcontractor. The State will prescribe the inventory format and may supply applicable forms to be used for this purpose.
- g. Within 90 calendar days prior to the termination or end of this contract, the Contractor shall provide a final inventory of equipment to the State and shall at that time query the State as to the requirements, including the manner and method, of returning state equipment to DHS. Final disposition of equipment shall be at state expense and according to state instructions. Property disposition instructions shall be issued by the State immediately after receipt of the final equipment inventory.
- h. **Motor Vehicles**
  - (1) If motor vehicles are purchased/reimbursed with contract funds or furnished by the State under the terms of this contract, within 30 calendar days prior to the termination or end of this contract, the Contractor and/or Subcontractor shall return such vehicles to the State and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to the State.
  - (2) if motor vehicles are purchased/reimbursed with contract funds or furnished by the State under the terms of this contract, the State shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or Subcontract may use said vehicles for performance and under the terms of this contract.
  - (3) The Contractor and/or Subcontractor agree that ail operators of motor vehicles, purchased/reimbursed with contract funds or furnished by the State under the terms of this contract, shall hold a valid State of California driver's license. In the event that 10 or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
  - (4) if any motor vehicle is purchase&reimbursed with contract funds or furnished by the State under the terms of this contract, the Contractor and/or Subcontractor, as applicable, shall provide, maintain and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this contract or any period of contract extension during which any vehicle remains in the Contractors and/or Subcontractor's possession:

**(a) Automobile Liability Insurance**

The Contractor, by signing this contract, hereby certifies that it possesses **or** will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage. liability combined. Said insurance **must be** obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with contract funds or furnished by the State under the terms of this contract, to the Contractor **and/or** Subcontractor.

- (b)** The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the State.
- (c)** The Contractor and/or Subcontractor agree that bodily **injury** and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this contract or until such time as the motor vehicle is returned to the State.
- (d)** The Contractor and/or Subcontractor agree to provide, at least 30 days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this contract, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e)** The Contractor and/or Subcontractor must provide evidence that any required certificates of insurance contain the following provisions:
  - [1]** The insurer will not cancel the insured's coverage without 30 calendar days prior written notice to the State (Department of Health Services).
  - [2]** The State of California, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract and any extension or continuation of this contract are concerned.
  - [3]** The insurance carrier shall notify the State of California Department of Health Services, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the contract number for which insurance was obtained.
- (f)** The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services, Office of Insurance and Risk Management. The Contractor shall be notified by the State, in writing, if this provision is applicable to this contract.
- (g)** In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle **possession**, the State may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.

**4. REQUIREMENTS APPLICABLE TO SUBCONTRACTS FOR SERVICES**

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. For subcontracts for services exceeding \$5,000, Contractors shall obtain at least three bids or justify a sole source award.
  - (1)** The contractor must provide in its request for authorization, all particulars necessary for evaluating the necessity or desirability of incurring such cost.

(2) The State may **identify** the information needed to fulfill this requirement.

- b. The State reserves the right to approve or disapprove the selection **of** subcontractors: require the substitution **of subcontractors**, and order the termination of subcontracts **entered into in** support of this contract.
- c. Actual subcontracts (Le., written agreement between the Contractor and a subcontractor) **of** \$5,000 or more are subject to the prior review and written approval of the State. the State may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by **the** State.
- d. Contractor shall maintain **a** copy of each subcontract entered into in support of this contract and shall, upon request by the State, make said copies available for approval, inspection, **or** audit.
- e. Sole responsibility rests with the Contractor to **ensure** that subcontractors are paid in a timely manner.
- f. The Contractor is responsible for all performance requirements under this contract even though performance may be carried out through a subcontract.
- g. The Contractor is responsible for a subcontractor's actions or failure to take action in fulfilling the requirements of this contract.
- h. When entering into consulting services contracts with the State, Contractor may be required to supply budget detail for each subcontractor and/or each major subcontracted activity under this contract.

(1) Budget detail format and submission requirements will be prescribed by the State.

(2) Methods of including budget detail in this contract, if applicable, will be prescribed by the State.

(3) Any subcontractor budget detail displayed in this contract, or incorporated by reference,, is included for information purposes only.

Changes to a subcontractor's identity or subcontract budget detail may be made with the mutual consent of the State and the Contractor and said changes shall not require the processing of a formal amendment to this contract.

- i. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this contract.
- j. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Contract *Number*) and final payment from the State, and to permit the State or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract."

- k. Unless otherwise stipulated in writing by the State, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this contract.
- l. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this exhibit: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 19, and 30.

## 5. INCOME RESTRICTIONS

Unless otherwise stipulated in this contract, the Contractor agrees that any refunds, rebates, **credits**, or other amounts (including any interest thereon) accruing to or received by the Contractor under this contract shall be paid by the Contractor to the State, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the State under this contract.

## 6. EXAMINATION OF ACCOUNTS, AUDITS, AND RECORDS

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this contract, including any matching costs and expenses. The foregoing constitutes "records" for the purposes of this clause.
- b. The Contractor's and/or Subcontractor's facility or office or such part thereof as may be engaged in the performance of this contract and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction by the State of California Bureau of State Audits or any of its duly authorized representatives.
- c. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this contract, and (2) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by subparagraphs (1) or (2) below:
  - (1) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
  - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

## 7. INSPECTION

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed thereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluations made by the State of the premises of the Contractor or a Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the state representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

## 8. FUNDING AVAILABILITY

State Contract Funds Committed Prior to July 1 of any Fiscal Year.

- a. Contractor understands that this contract may have been written and executed prior to the passage of a Governor's annual budget in order to avoid program and fiscal delays which could occur if the contract were executed after such event.
- b. This contract is valid and enforceable only if sufficient funds are made available by the appropriate budget act for the purposes of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the legislature and contained in a budget bill or any statute enacted by the legislature that may affect the provisions, terms, or funding of this contract in any manner.

- c. If sufficient funds are not appropriated for this program and contract: this contract shall be invalid and of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the contractor or to furnish any other considerations under this contract, and the contractor shall not be obligated to perform any provisions of this contract.

#### 9. STATE NONDISCRIMINATION CLAUSE AND REQUIREMENTS

- a. During the performance of this contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other contract.
- b. Contractor shall include the nondiscrimination and compliance provisions of paragraph a in all subcontracts to perform work under the contract.
- c. The Contractor will not discriminate in the provision of set-vices against any person with protected status as provided by state and federal law and described in paragraph a.
- d. For the purpose of this contract, distinctions made on the basis of a person's protected status as noted in paragraph a include, but are not limited to, the following: denying a participant any service or providing a benefit to a participant which is different, or is provided in a different manner or at a different time or place from that provided to other participants under this contract; subjecting a participant to segregation or separate treatment in any matter related to his or her receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether he or she satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit.
- e. The Contractor will take affirmative action to ensure that intended beneficiaries are provided services without regard to their protected status as noted in paragraph a.
- f. The Contractor agrees that complaints alleging discrimination in the delivery of services by the Contractor or his or her subcontractor because of a person's protected status as noted in paragraph a will be resolved by the State through the Department of Health Services' Affirmative Action/Discrimination Complaint Process.
- g. The Contractor shall, subject to the approval of the Department of Health Services, establish procedures under which participants of service are informed of their rights to file a complaint alleging discrimination or a violation of their civil rights with the Department of Health Services.
- h. The Contractor shall operate the program or activity in such a manner that it is readily accessible to and usable by mentally or physically handicapped persons pursuant to 45 Code of Federal Regulations, Part 84, Sections 84.21 and 84.22.

- i. The Contractor shall keep records, submit required compliance reports, and permit state access to records in order that the State can determine compliance with the nondiscrimination requirements pursuant to 45 Code of Federal Regulations, Part 80, 84, and 90, Sections 80.6, 84.61, and 90.42.

## 10. FREEZE EXEMPTIONS

(Applicable only to local governmental and public entities.)

- a. Contractor agrees that any hiring freeze adopted during the term of this contract shall not be applied to the positions funded, in whole or in part, by this contract.
- b. Contractor agrees not to implement any personnel policy which may adversely affect performance or the positions funded, in whole or in part, by this contract.
- c. Contractor agrees that any travel freeze or travel limitation policy adopted during the term of this contract shall not restrict travel funded, in whole or in part, by this contract.
- d. Contractor agrees that any purchasing freeze or purchase limitation policy adopted during the term of this contract shall not restrict or limit purchases funded, in whole or in part, by this contract.

## 11. AMERICANS WITH DISABILITIES ACT REQUIREMENTS

By signing this contract, contractor assures the state that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

## 12. RIGHTS IN DATA

- a. Subject Data. As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, work flow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
- b. Federal Government and State Rights. Subject only to the provisions of c below, the Federal Government and State may use, duplicate, or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all Subject Data delivered under this contract.
- c. License to Copyrighted Data. In addition to the Federal Government and state rights as provided in b above, with respect to any subject data which may be copyrighted, the Contractor and applicable subcontractor agrees to and does hereby grant to the Federal Government and State a royalty-free, nonexclusive, and irrevocable license throughout the world to use, duplicate, or dispose of such data in any manner for State or Federal Government purposes and to have or permit others to do so. Provided, however, that such license shall be only to the extent that the Contractor now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

## 13. CLEAN AIR AND WATER

(Applicable only if the contract is not with a sole source vendor of products or services, or if it exceeds \$5,000.)

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The Contractor agrees under penalty of perjury (it, he, she) is not in violation of any order or resolution which is not subject to review promulgated by the State Air Resources Board **or an air pollution** district.

The Contractor agrees under penalty of perjury (it, he, she) is not subject to **a cease and desist order** which is not subject to review issued pursuant to Section 13301 of the Water Code **for violation of** waste discharge requirements or discharge prohibitions, or is not finally determined to be **in** violation of provisions of federal law relating to air or water pollution.

14. **USE OF MINORITY, WOMEN, AND DISABLED VETERAN BUSINESS ENTERPRISES**

(Applicable to any contract subject to **M/W/DVBE** goal participation **or** good faith effort compliance. Not applicable to local government or public entities or entities exempted by DHS.)

- a. It is a federal policy to award a fair share of contracts to small, minority, and women owned business firms. The State Legislature has declared that a fair proportion of the total purchases and contracts or subcontracts for property and services for the State be placed with minority, women, and disabled veteran owned business enterprises.
- b. All **M/W/DVBE** participation attachments, however labeled, completed as **a** condition of bidding, contracting or amending a subject contract are incorporated herein and made a part of this contract by this reference.
- c. Contractor agrees to use any and all proposed **M/W/DVBEs**, as identified in previously submitted **M/W/DVBE** attachments, unless the contractor submits a written request for substitution of a like vendor. All requests for substitution must be approved by the State, in writing, prior to using a substituted **M/W/DVBE** subcontractor, supplier or vendor.

Requests for substitution must be directed to the program funding this contract and must contain: (1) identity of the firm to be substituted and its **M/W/DVBE** status, (2) reason for the substitution, and (3) identity of the replacement firm and its **M/W/DVBE** status.

- d. Contractor agrees the State will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor agrees to provide the State or its delegatee with any relevant information requested and shall permit the State or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with State **M/W/DVBE** goal or good faith effort compliance. Contractor further agrees to maintain such records for a period of three (3) years after final payment is received under the contract.

15. **PRINTING**

If printing or other reproduction work of more than an incidental and minor dollar amount (e.g., \$25,000 or 10 percent of contract total, whichever is less) is a reimbursable item in this contract, it shall be printed or produced by the State Printer. The State Printer may, at his sole option, elect to forego said work and delegate the work to the private sector. If the State Printer prints or produces said work, or the State obtains the printing or other work through another source, the cost will be deducted from said contract amount. This requirement does not apply to normal in-house copying necessary for routine business matters of the Contractor.

16. **PRIOR APPROVAL OF TRAINING SEMINARS, WORKSHOPS, OR CONFERENCES**

Contractor shall obtain prior state approval over the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, Or conference, and over any reimbursable publicity. or educational materials to be made available for

distribution. The Contractor shall acknowledge the support of the State **whenever publicizing** the **work** under the contract in any media. This paragraph does not apply to necessary **staff** meetings to conduct routine business matters.

## 17. CONFIDENTIALITY OF INFORMATION

- a. The Contractor and his or her employees, agents, or subcontractors shall protect from unauthorized disclosure names and other **identifying** information concerning persons either receiving services pursuant to this contract or persons whose **names** or **identifying** information become available or are disclosed to the Contractor, his/her employees, agents, or subcontractors as a result of services performed under this contract, except for statistical information not identifying any such person.
- b. The Contractor, his/her employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this contract
- c. The Contractor, his/her employees, agents, or **subcontractors** shall promptly transmit to the State all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this contract or authorized by the client, any such identifying information to anyone other than the State without prior written authorization from the State.
- e. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

## 18. NATIONAL LABOR **RELATIONS** BOARD CERTIFICATION

(Not applicable if Contractor is a public entity.)

Contractor, by signing this contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

## 19. DOCUMENTS AND WRITTEN REPORTS

Any document or written report prepared as a requirement of this contract shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or **report**, if the total cost for work by nonemployees of the State exceeds \$5,000.

## 20. RESOLUTION OF DIRECT SERVICE CONTRACT DISPUTES

- a. If Contractor believes there is a dispute or grievance between the Contractor and the State, the procedures set forth in Chapter 2.1, Sections 20201 through 20205, of Title 22, Of the California Code of Regulations, shall be followed.
- b. If the Contractor wishes to appeal the decision of the Deputy Director for Public Health or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)



- c. Disputes arising out of an audit or examination of a contract not covered by **subdivision** (a) of Section 20204, of Chapter 21, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation, or the contract shall be **handled** in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.

## 21. FINANCIAL AND COMPLIANCE AUDIT OF NONPROFIT ENTITIES

(Applicable only if Contractor is a nonprofit entity.)

- a. Definitions within this paragraph are defined in Section 38040 of the Health and Safety Code, which, by this reference, is made a part hereof.
- b. Contractor agrees to obtain an annual single, organization-wide financial and compliance audit. The audit shall be conducted in **accordance** with the requirements specified in the Federal Office of Management and the **Budget** (OMB) Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."
- c. References to "Federal" in OMB Circular A-133 shall be considered to mean "Federal and/or State" in contracts where state funds are present either alone or in conjunction with federal funds.
- d. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year. Two copies of the audit report shall be delivered to the state program funding this contract. The report shall be due within 30 days after the completion of the audit.
- e. If the Contractor receives less than \$25,000 per year from the State, the audit shall be conducted biennially, unless there is evidence of fraud or other violation of state law in connection with this contract. This requirement takes precedence over the OMB A-133 section which exempts from federal audit requirements any nonprofit institution receiving less than \$25,000 per year.
- f. The cost of such audit may be included in the funding for this contract up to the proportionate amount this contract represents of the Contractor's total revenue.
- g. The State, or its authorized designee including the Bureau of State Audits, is responsible for conducting contract performance audits which are not financial and compliance audits.
- h. Nothing in this contract limits the State's responsibility or authority to enforce state law or regulations, procedures, or reporting requirements arising pursuant thereto.
- i. Nothing in this paragraph limits the authority of the State to make audits of this contract, provided, however, that if independent audits arranged for by Contractor meet generally accepted governmental auditing standards, the State shall rely on those audits and any additional audit work shall build upon the work already done.
- j. The State may, at its option, direct its own auditors to perform the single audit described in OMB Circular A-133. The State's auditors shall meet the independence standards specified in Government Auditing Standards. The audit shall be conducted in accordance with OMB Circular A-133 so as to satisfy all state and federal requirements for a single organization-wide audit.

## 22. CONTRACT AMENDMENTS

This contract may be amended by mutual agreement ~~between~~ the parties as stipulated in the body of this contract. The amendment may be subject to the approval of the Department of General Services.

## 23. **CONFLICT OF INTEREST-CURRENT AND FORMER STATE EMPLOYEES**

### a. **Current State Officers and Employees**

- (1) Contractor shall not utilize in the performance of this contract any state officer or employee in the state civil service or other appointed state official unless the employment, activity, or enterprise is required as a condition of the officer or employee's regular state employment. Employee in the state civil service is defined to be any person legally holding a permanent or intermittent position in the state civil service.
- (2) If any state officer or employee is utilized or employed in the performance of this contract, Contractor shall first obtain written verification from the State that the employment, activity, or ~~enterprise~~ is required as a condition of the ~~officer's~~, employee's, or official's regular state employment and shall keep said verification on file for three years after the termination of this contract.
- (3) Contractor may not accept occasional work from any currently employed state officer, employee, or official.
- (4) If Contractor accepts volunteer work from any currently employed state officer, employee, or official, Contractor may not reimburse, or otherwise pay or compensate, such person for expenses incurred, including, without limitation, travel expenses, per diem, or the like, in connection with volunteer work on behalf of Contractor.
- (5) Contractor shall not employ any state officers, employees, or officials who are on paid or unpaid leave of absence from their regular state employment.
- (6) Contractor or anyone having a financial interest in this contract may not become a state officer, employee, or official during the term of this contract. Contractor shall **notify** each of its employees, and any other person having a financial interest in this contract that it is unlawful under the Public Contract Code for such person to become a state officer, employee, or official during the term of this contract unless any relationship with the Contractor giving rise to a financial interest, as an employee or otherwise, is first terminated.
- (7) Occasional or one-time reimbursement of a state employee's travel expenses is not acceptable.

### b. **Former State Officers and Employees**

- (1) Contractor shall not utilize in the performance of this contract any formerly employed person of any state agency or department that was employed under the state civil service, or otherwise appointed to serve in the state government, if that person ~~was~~ engaged in any negotiations, transactions, planning, arrangement, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency or department. This prohibition shall apply for a two-year period beginning on the date the person left state employment.
- (2) Contractor shall not utilize within 12 months from the date of separation of services, a former employee of the contracting state agency or department if that former employee was employed in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to the employee leaving state service.

### c. **Failure to Comply with Subparts a or b**

If Contractor violates any provision of subparts a or b ~~above~~, such action by Contractor shall render this contract void, unless ~~the violation~~ **is technical or nonsubstantive**.

**24. CONTRACTOR NAME CHANGE**

**Contractor** shall provide a **written** notice to the State at least 30 days prior to any changes to the **Contractor's** current legal name.

**25. NOVATION**

If the Contractor proposes any novation agreement, the **State shall act upon** the proposal within 60 days **after** receipt of the written proposal. The State may review and consider the proposal, **consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection may be made** orally within the 60day period, and confirmed in writing within fiie days.

**26. DRUG-FREE WORKPLACE**

**Contractor** certifies to the State that it will provide a drug-free workplace by doing all of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace.
  - (2) The person's or organization's policy of maintaining a drug-free workplace.
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs.
  - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that each employee engaged **in** the performance of the contract or grant be given a copy of the statement required by subdivision a and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.
- d. Contractor agrees this contract may be subject to suspension of payments or termination of this contract, or both, and the Contractor may be subject to debarment, in accordance with the requirements of the Government Code, Section 8350 et seq., if the Department determines that any of the following has occurred:
  - (1) The Contractor or grantee has made a false certification.
  - (2) The Contractor violates the certification by failing to carry out the requirements of subdivisions a through c above.

**27. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona **fide** established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee;

**28. FINAL INVOICE—FINAL REPORT—RETENTION OF FUNDS**

(Applicable only if a final report is required by the contract)

The State may, at its discretion, withhold **10** percent (10%) of the face amount of the **contract**, 50 percent (50%) of the final invoice, or \$3,000, whichever is greater, until receiving a **final report** that is satisfactory to the State.

**29. CONTRACTOR PERFORMANCE EVALUATION**

The State may, at its discretion, evaluate the performance of the Contractor at the conclusion of the contract. If performance is evaluated, the evaluation shall not be a public record, but may be placed on file with the Department of General Services. Negative performance evaluations may be considered by the State prior to making future contract awards. Performance evaluations may include, but not be limited to, the following:

- a. Whether the work or services were completed as specified.
- b. The reasons for and amount of cost overruns, if any.
- c. Whether the work or services met the specified quality standards.
- d. Whether the Contractor fulfilled all contract requirements.
- e. The factors outside the Contractor's control that may have caused performance difficulties.

**30. OFFICIALS NOT TO BENEFIT**

No members of or delegate to Congress or the State Legislature shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this contract if made with a corporation for its general benefits.