

Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Each monthly invoice for the month shall be submitted for payment no more than sixty (60) calendar days following the close of each month, unless an alternate deadline is agreed to in writing by the program contract manager. Invoices shall include the Agreement Number and shall be submitted in triplicate in arrears to:

Ian Tovar
California Department of Public Health
Cancer Prevention and Nutrition Section
MS 7204
PO BOX 997377
Sacramento, CA 95899-7377

The State, at its discretion, may designate an alternate invoice submission address. A change in the invoice address shall be accomplished via a written notice to the Contractor by the State and shall not require an amendment to this agreement.

- C. Invoices shall:
 - 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead, invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Bear the Contractor's name as shown on the agreement.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.
 - 5) Report expenses attributed to DVBE subcontractors or DVBE suppliers at any tier (if any). This requirement only applies if your firm identified DVBEs for participation during the selection process.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

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3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Amounts Payable

[This numbered item may appear in the final contract with the selected bidder. If included, this item will be completed after the bid amounts are known.]

A. The amounts payable under this agreement shall not exceed:

- 1) \$ _____ for the budget period of 10/01/10 through 09/30/11.
- 2) \$ _____ for the budget period of 10/01/11 through 09/30/12.
- 3) \$ _____ for the budget period of 10/01/12 through 09/30/13.

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

C. The Contractor must maintain records reflecting actual expenditures for each state fiscal year covered by the term of this agreement.

5. Timely Submission of Final Invoice

A. A final undisputed invoice shall be submitted for payment no more than sixty (60) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding.

B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline. Written State approval shall be sought from the program contract manager prior to the expiration or termination date of this agreement.

C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "**Contractor's Release (Exhibit F)**" acknowledging submission of the final invoice to the State and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.

6. Allowable Line Item Shifts

A. Subject to the prior review and approval of the State, line item shifts of up to fifteen percent (15%) of the annual contract total, not to exceed a maximum of one hundred thousand (\$100,000) annually are allowed, so long as the annual agreement total neither increases nor decreases.

The \$100,000 maximum limit shall be assessed annually and automatically adjusted by the State in accordance with cost-of-living indexes. Said adjustments shall not require a formal agreement amendment. The State shall annually inform the Contractor in writing of the adjusted maximum.

B. Line item shifts meeting this criteria shall not require a formal agreement amendment.

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- C. The Contractor shall adhere to State requirements regarding the process to follow in requesting approval to make line item shifts.
- D. Line item shifts may be proposed/requested by either the State or the Contractor.

7. Progress Payment Withholds

- A. This provision replaces and supersedes provision 22 of Exhibit D(F).
- B. Progress payments may not be made more frequently than monthly in arrears for work performed and costs incurred in the performance of the agreement. In the aggregate, progress payments may not exceed 90 percent of the total agreement amount, regardless of agreement length.
- C. Ten percent (10%) may be withheld by CDPH from each invoice submitted for reimbursement, under the following conditions:
 - 1) For services and costs associated with contractor and/or subcontractor performance that is considered to be of an ongoing nature or performed continuously throughout the term of the agreement.
 - 2) For individual services associated with a specific agreement deliverable that has not yet been received or completed in its entirety.
 - 3) For individual and/or distinct tasks, work plans, or project activities that have not yet been completed in their entirety.

D. Release of Amounts Withheld

As individual and/or distinct tasks, services, work plans, or project activities are completed in their entirety by either the Contractor or Subcontractor and any scheduled/required deliverables or reports are delivered to CDPH; then any funds so withheld may be released to the Contractor upon acceptance and/or acknowledgement that all such items have been completed to the full satisfaction of CDPH.

E. Payment Requests Excluded from the 10 Percent (10%) Withhold

Ten percent (10%) payment withholds shall not be applied to reimbursements or periodic payment requests for direct costs associated with equipment purchases, media buys, operating expense items, and other procurements not directly associated with the Contractor's personal performance.

8. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting

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a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

- D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. For more information on allowable travel and per diem expenses and required documentation, see Exhibit G entitled, "Travel Reimbursement Information".
- E. Costs and/or expenses deemed unallowable are subject to recovery by CDPH. See provision 9 in this exhibit entitled, "Recovery of Overpayments" for more information.

9. Recovery of Overpayments

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

10. Salary Comparability

- A. Salary rates paid to contract staff should not exceed the rates paid to State personnel holding comparable positions. In addition, proposed cost of living increases cannot exceed those increases granted annually to state employees.

11. Timely Submission of Invoices

- A. An invoice shall be submitted for payment within 18 months following the end of each calendar quarter in which the work was performed and costs incurred in the performance of the agreement, unless the contract has reached the expiration/termination date or a later or alternate deadline is agreed to in writing by the program contract manager.
- B. The State may, at its discretion, choose not to honor any delinquent invoice if the Contractor fails to obtain prior written State approval of an alternate invoice submission deadline.