



**Nutrition Education Obesity Prevention Branch (NEOP) Media Buy  
INVITATION FOR BID - NUMBER 13-10048  
Notice to Prospective Bidders**

April 15, 2013

You are invited to review and respond to this Invitation for Bid (IFB), entitled NEOP Media Buy, number 13-10048. In submitting your bid, you must comply with the instructions found herein.

**BID DUE DATE**

Regardless of postmark or method of delivery, the California Department of Public Health (CDPH), NEOP must receive bid packages no later than **May 20, 2013, by 4:00 p.m. PST.**

The Department has elected to waive the Disabled Veteran Business Enterprise (DVBE) program participation requirements. This solicitation does not include the option of a DVBE incentive.

**FUNDING LIMIT**

The proposed contract is valid and enforceable only if sufficient funds are made available by the Budget Act of the appropriate fiscal year for the purpose(s) of the contract.

In addition, the proposed contract is subject to any additional restrictions, limitations, or conditions enacted by the Legislature, which may affect the provisions, terms, or funding of the contract in any manner. If full funding does not become available, CDPH will either cancel the resulting contract or amend it to reflect reduced funding and reduced activities.

**Please read the document carefully.** In the opinion of CDPH, this IFB is complete and without need of explanation. However, if you have questions, please refer to Section D, Bidder Questions in the IFB.

Please note that no *verbal* information given will be binding upon the State unless such information is issued in writing as an official addendum.

California Department of Public Health  
Nutrition Education Obesity Prevention Branch  
1616 Capitol Ave., Suite 74.516, MS 7204  
Mail: P.O. Box 997377, MS 7204  
Sacramento, CA 95899-7377

Attachments

---

**Table of Contents**

A.	Purpose and Description of Services .....	1
B.	Time Schedule .....	1
C.	Contract Term .....	1
D.	Bidder Questions .....	2
	1. Verbal Questions .....	2
E.	Reasonable Accommodations .....	2
F.	Scope of Work .....	2
G.	Qualification Requirements.....	2
H.	Bid Format and Content Requirements .....	3
	1. General instructions .....	3
	2. Bid format requirements.....	3
	3. Bid content requirements .....	4
	4. Required attachments / documentation .....	4
I.	Submission of Bids .....	6
	1. Submission instructions .....	6
	2. Bidder warning .....	6
	3. Proof of timely receipt .....	6
	4. Bidder costs .....	7
J.	Bid Opening .....	7
K.	Bid Requirements and Information .....	7
	1. Non-responsive bids .....	7
	2. Bid modifications after submission .....	8
	3. Bid mistakes.....	8
	4. Withdrawal and/or resubmission of bids.....	8
	a. Withdrawal deadline .....	8
	b. Submitting a withdrawal request.....	8
	c. Resubmitting a bid package .....	9
	5. Evaluation and selection .....	9
	a. Bid opening/reading .....	9
	b. Bid package review .....	9
	c. Notice of Intent to Award.....	9
	6. Contract award and protests.....	9
	a. Contract award .....	9
	b. Settlement of tie bids .....	10
	c. Protests .....	10

---

**Table of Contents (continued)**

7.	Disposition of bids .....	10
8.	Inspecting or obtaining copies of bids .....	10
a.	Who can inspect or copy bid materials.....	10
b.	What can be inspected / copied and when .....	11
c.	Inspecting or obtaining copies of bid materials .....	11
9.	Verification of bidder information .....	11
10.	CDPH rights .....	11
a.	IFB corrections .....	11
b.	Collecting information from bidders .....	12
c.	Immaterial bid defects.....	12
d.	Correction of clerical or mathematical errors.....	12
e.	Right to remedy errors .....	13
f.	No contract award or IFB cancellation.....	13
g.	Contract amendments after award .....	13
L.	Preference Programs and Incentive Programs .....	13
1.	Small/Micro Business Preference.....	13
2.	Non-Small Business Subcontractor Preference .....	14
3.	Nonprofit Veteran Service Agency (NVSA) Small business Preference .....	15
4.	Other Preference Programs.....	15
M.	Contract Terms and Conditions .....	15
1.	Contract Forms/Exhibits.....	16
2.	Unanticipated tasks.....	16
3.	Resolution of differences between IFB and contract language .....	16
4.	Loss Leader .....	16
5.	Subcontractors .....	16

## A. Purpose and Description of Services

The Department of Public Health (CDPH), NEOP, is soliciting bids from firms that will negotiate, place, traffic, steward and evaluate a mass media buy for federal fiscal year 2013 and 2014 for NEOP. Bids must address all of the services described in Section F of this IFB, entitled "Scope of Work," including those terms in the referenced exhibits.

The CDPH intends to make a single contract award to the responsive and responsible firm offering the lowest bid. This IFB is open to all eligible firms and/or individuals that meet the qualification requirements described in Section G.

**Contract Budget: Subject to the availability of funds and approval by CDPH and the United States Department of Agriculture (USDA), the contract has an estimated value range of \$7,000,000.00- \$9,000,000.00, inclusive of bidder compensation. Any bids received that exceed the maximum dollar amount will be deemed non-responsive.**

## B. Time Schedule

Below is the tentative time schedule for this IFB:

Event	Date	Time (If applicable)
IFB Released	April 15, 2013	
Questions Due	April 19, 2013	at noon
Question/Answer Summary Posted	April 26, 2013	at noon
Bid Due Date	May 20, 2013	at 4:00 p.m.
Bid Opening	May 21, 2013	at 10:00 a.m.
Notice of Intent to Award	May 23, 2013	at 4:00 pm
Protest Deadline	May 31, 2013	at 4:00pm
Proposed Start Date of Contract	July 1, 2013	

## C. Contract Term

The term of the resulting contract is anticipated to be effective from July 1, 2013 or upon approval by CDPH and Department of General Services (DGS), with an anticipated 15 month term **with an option to renew for an additional year, OR no more than 30% of the total budget on a one-time basis.** The contract term may change if CDPH cannot execute the contract in a timely manner due to unforeseen delays.

The resulting contract will be of no force or effect until it is signed by both parties and approved by DGS. Bidder is hereby advised not to commence performance until all approvals have been obtained. If performance commences before all approvals are obtained, said services may be considered to have been volunteered and services will not be reimbursed prior to the agreement execution date.

#### D. Bidder Questions

Bidders shall immediately notify CDPH if clarification is needed regarding the services sought or questions arise about the IFB and/or its accompanying materials, instructions, or requirements. Bidders shall submit questions via the BidSync website [www.bidsync.com](http://www.bidsync.com).

Bidders that fail to report a known or suspected problem with this IFB and/or any accompanying materials or fail to seek clarification and/or correction of this IFB and/or any accompanying materials shall submit a bid at their own risk. In addition, if awarded the contract, the successful bidder shall not be entitled to additional compensation for any additional work caused by such problem, including any ambiguity, conflict, discrepancy, omission, or error.

##### 1. Verbal questions

CDPH reserves the right not to accept or respond to verbal questions and inquiries. **Spontaneous verbal remarks provided in response to verbal inquiries are unofficial and are not binding on CDPH unless later confirmed in writing.** Any additional requirements shall be issued in the form of an addendum to all potential bidders.

#### E. Reasonable Accommodations

For individuals with disabilities, CDPH will provide assistive services such as reading or writing assistance, and conversion of the IFB, questions/answers, IFB addenda, or other administrative notices into Braille, large print, audiocassette, or computer disk. To request copies of written materials in an alternate format, please call the number below to arrange for reasonable accommodations.

Monica Regalado	
Telephone number	(916) 449-5931
(TTY) - California Relay telephone number	1-800-735-2929

NOTE: The range of assistive services available may be limited if requestors cannot allow five (5) or more state working days prior to the date the alternate format material is needed.

#### F. Scope of Work

See **Exhibit A** entitled, "Scope of Work" that is included in the Sample Contract Forms/Exhibits section of this IFB. **Exhibit A** contains a detailed description of the services and work to be performed as a result of this IFB.

#### G. Qualification Requirements

Failure to meet the following requirements by the bid due date will be grounds for CDPH to deem a bidder non-responsive. In submitting a bid, each bidder must certify that it possesses the following qualification requirements.

1. At least three (3) consecutive years of experience within the past five years in the following:
  - a. Negotiating, placing, trafficking, stewarding and evaluating large-scale advertising buys.

- b. The use of media measurement resources including Nielsen Research and Arbitron or other standard media measurement in all markets.
  - c. The use of Strata Report software system, or an equally advanced media database system.
2. Bidders must certify their proposal response is not in violation of the requirements of the Darfur Contracting Act of 2008, Public Contract Code Sections 10475, et seq. **Attachment 8.**
  3. Bidders must certify their willingness to comply with all terms and conditions addressed in Section M of this IFB, entitled "Contract Terms and Conditions," including those terms in the referenced exhibits.
  4. Corporations must certify they are in good standing and qualified to conduct business in California.
  5. Non-profit organizations must certify they are eligible to claim non-profit status.
  6. Bidders must not be tax delinquent to the State of California per Public Contract Code (PCC) 10295.4
  7. Bidders must have a past record of sound business integrity and history of being responsive to past contractual obligations. Must provide three (3) references to reflect this.
  8. Bidder must carry appropriate liability insurance.

## H. Bid Format and Content Requirements

### 1. General instructions

- a. Each individual or firm may submit only one (1) bid. For the purposes of this paragraph, "firm" includes a parent corporation of a firm and any other subsidiary of that parent corporation. If a firm or individual submits more than one (1) bid, CDPH will reject all bids submitted by that firm or individual.
- b. Develop bids by following all IFB instructions and instructions or clarifications in question/answer notices, clarification notices, or IFB addenda.
- c. Before preparing a bid, seek timely written clarification of any requirements or instructions that are believed to be vague, unclear or that are not fully understood. Contract increases will not be allowed due to poor examination of work sites and/or specifications.
- d. Arrange for timely delivery of the bid package to the specified address. Bidders are advised not to wait until shortly before the bid submission deadline to submit the bid.

### 2. Bid format requirements

- a. Submit one (1) original bid package. Bid must be complete with a copy of all required attachments and documentation.
- b. The person who is authorized to bind the bidding firm must sign and date each form/attachment that requires a signature. The forms/attachments must be signed in

ink, preferably in a color other than black. **Signature stamps are not acceptable.** Unsigned bids will be rejected.

### 3. Bid content requirements

This section specifies the order and content of each bid and where applicable, indicates form/attachment completion instructions.

When completing the attachments, follow the instructions in this section and any instructions appearing on the attachment. **Unless otherwise indicated, do not submit supplemental information or other materials that CDPH has not requested.**

Complete and assemble the following items. After completing and signing the applicable attachments, assemble all items in the order shown below and place them in a **sealed** envelope.

### 4. Required attachments/documentation

Attachment/Documentation	Instructions
1 - Bid Form	Complete this form entirely. Do not submit supplemental cost or rate sheets. Any corrections or changes to the dollar amounts entered on the Bid Form after the amounts are originally inserted <b>must</b> be initialed in blue ink by the bidder.
1A – 1M and 2A – 2L Budget Detail Work Sheets	Complete each form to show how the annual costs appearing on the Bid Form were determined. Identify costs for each cost category shown on the form. Enter \$0 if no costs are anticipated in a particular cost category. Please initial, in blue ink, any corrections or changes to the dollar amounts entered on any of these forms. Bidders may create like images or computerized reproductions of the forms included in this IFB. Use as many pages as are necessary to display the detailed budgeted costs. In the footer, show Page # of Page ##. Vendor terms of compensation, shall not exceed 8% of the total approved Net Cost.
2 - Required Attachment Checklist	Check each item with "Yes" or "N/A," as applicable, and sign the form. If necessary, explain the choices on a separate sheet of paper.  If a bidder marks "Yes" or "N/A" and attaches an explanation to the checklist to clarify their choice, CDPH considers this a "qualified response." Any "qualified response," determined by CDPH to be unsatisfactory or insufficient to meet a requirement, may cause a bid to be deemed non-responsive.
3 - Business Information Sheet	Completion of the form is self-explanatory and mandatory.

Attachment/Documentation	Instructions
4 - Bidder References	Identify three (3) most recent clients serviced within the past three (3) years that can confirm their satisfaction with the bidder's services. If possible, identify clients whose needs were similar in scope and nature to the services sought in this IFB. List the most recent clients first. <b>Bidder references must also be provided for any subcontractors that will be used under this contract.</b>
5 – Bidder Declaration	Complete and return this form.
6 – CCC-307 Contractor Certification Clauses	Complete and sign this form indicating a willingness and ability to comply with the Contractor Certification Clauses (CCC) appearing in this attachment.
7 – Std. 204, Payee Data Record	Complete and return this form.
8 – Darfur Contracting Act	Complete and return this form. Select the option that applies to your company and follow instructions on the form.
9 – IRAN Contracting Certification	Complete and return this form
10 - Non-Small Business Subcontractor Preference Instructions 10a - Non-Small Business Subcontractor Preference Request <b>and</b> 10b - Small Business Subcontractor/Supplier Acknowledgment	<b>Submission of these forms is optional.</b> Read and carefully follow the completion instructions in Attachments 10, 10a, and 10b. Complete and return Attachments 10a and 10b <u>only</u> if the bidding firm is not a certified small business but is requesting a subcontractor bidding preference by committing to use one or more certified small business subcontractors for an amount equal to at least 25% of the total bid price.
Business License	All businesses <u>must</u> submit a copy of a current business license issued by the governmental jurisdiction in which the business is located.  Submit an explanation if this documentation cannot be supplied or there is reason to believe no license is required.

Attachment/Documentation	Instructions
Proof of Corporation status <b>(Corporations Only)</b>	Corporations must either submit a copy of the bidding firm's most current Certificate of Status issued by the State of California, Office of the Secretary of State <u>or</u> submit a downloaded copy of the bidding firm's on-line status information from the California Business Portal website of California's Office of the Secretary of State.
Proof of Nonprofit Status <b>(Nonprofit Organizations Only)</b>	Nonprofit Organizations must submit a copy of a current IRS determination letter indication nonprofit or 501 (3) (c) tax exempt status.
Proof of financial stability	Include the following financial statements for the last year or latest twelve-month period. <ul style="list-style-type: none"> <li>a) Annual income statement, and</li> <li>b) Quarterly or annual balance sheets</li> </ul> The Bidder may submit copies of financial statements prepared by its internal Accounting Officer/Accounting Department or an auditing firm.

**I. Submission of Bids**

**1. Submission instructions**

- a. Assemble an original bid package.
- b. Place bid package in a single envelope or package. Seal the envelope.
- c. Mail the bid package to the CDPH, NEOP Branch. Bids may not be transmitted electronically by fax or email.
- d. Regardless of postmark or method of delivery, the CDPH, NEOP, must receive the bid package by the date and time stated in Section B of this IFB, entitled "Time Schedule." **CDPH will not open or read late bids.**
- e. Label and submit the bid package to:

<b>Overnight Express or U.S. Mail</b>
<b>IFB 13-10048 (Do Not Open)</b> California Department of Public Health NEOP Branch Attn: Monica Regalado 1616 Capitol Ave., Suite 74.516, MS 7204 P.O. Box 997377, MS 7204 Sacramento, CA 95899-7377

**2. Bidder warning**

- 1) CDPH's internal processing of mail may add 48 hours or more to the delivery time. If the bid package is mailed, consider using certified or registered mail and request a receipt upon delivery.

NOTE: It is the bidder's responsibility to ensure the bid is received by CDPH, NEOP, before the bid due date/time. CDPH, NEOP, is not responsible for bids received after the bid due date and/or time due to circumstances beyond CDPH, NEOP's control.

**3. Proof of timely receipt**

- a. Upon receipt of bid package, CDPH, NEOP staff will stamp each bid package/envelope with a date/time stamp or handwrite date and time and initial.
- b. To be timely, CDPH, NEOP must receive bid packages at the stated place of delivery no later than the time specified in Section B of this IFB, entitled "Time Schedule" on the bid due date. Delivery to the CDPH, NEOP mailroom or the presence of a U.S. postmark will not serve as proof of timely delivery.
- c. CDPH will deem late bid packages non-responsive.
- d. Receipt of bid delivery will be provided upon request.

**4. Bidder costs**

Bidders are responsible for all costs of developing and submitting a bid package. Such costs cannot be charged to CDPH or included in any cost element of a bidder's price offering.

**J. Bid Opening**

All bid packages properly received according to the IFB instructions on or before the bid due date will be publicly opened and read at the following address, at the date and time stated in Section B of this IFB, entitled "Time Schedule":

California Department of Public Health  
NEOP Branch  
1616 Capitol Ave  
Sacramento, CA 95814

Visitors must check in with the Guard. A NEOP staff member will escort visitors to the Bid Opening.

**K. Bid Requirements and Information****1. Non-responsive bids**

In addition to any condition previously indicated in this IFB, the following occurrences **may** cause CDPH to deem a bid non-responsive.

- a. Failure of a bidder to:

- 1) Meet bid format/content or submission requirements including, but not limited to, the sealing and/or labeling of the bid package.
- b. If a bidder submits:
  - 1) A bid that is conditional, materially incomplete or contains material alterations or irregularities of any kind to include obvious erasures.
  - 2) Price information that contradicts the price/cost figures on the Bid Form or submits cost information in a format contrary to the IFB instructions.
  - 3) False, inaccurate, or misleading information or falsely certifies compliance on any IFB attachment.
- c. If CDPH discovers at any stage of the bid process or upon contract award that a bidder is unwilling or unable to comply with the contract terms, conditions and/or exhibits cited in this IFB and/or the resulting contract.
- d. If other irregularities occur in a bid response that are not specifically addressed herein (i.e., the bidder places any conditions on performance of the scope of work, submits a counter offer/proposal, etc.). Any deviation from the specifications may be cause for rejection of the bid.

## **2. Bid modifications after submission**

- a. All bid packages are to be complete when submitted. However, an entire bid package may be withdrawn and the bidder may resubmit a new bid package, prior to submission deadline.
- b. To withdraw and/or submit a new bid package, follow the instructions appearing in the Section K of this IFB, entitled "Bid Requirements and Information," paragraph 4.

## **3. Bid mistakes**

If prior to contract award, award confirmation, or contract signing, a bidder discovers a mistake in their bid that renders the bidder unable or unwilling to perform all scope of work services for the price/costs offered, the bidder must immediately notify CDPH and submit a written request to withdraw its bid following the procedures set forth in Section K of this IFB, entitled "Bid Requirements and Information," paragraph 4, b.

## **4. Withdrawal and/or resubmission of bids**

### **a. Withdrawal deadline**

A bidder may withdraw its bid any time prior to the bid due date.

### **b. Submitting a withdrawal request**

- 1) Submit a written withdrawal request signed by an authorized representative of the bidder.
- 2) Label and submit the withdrawal request using one of the following methods:

<b>Overnight Express/US Mail:</b>
<b>Withdrawal IFB 13-10048</b> California Department of Public Health NEOP Branch Attn: Monica Regalado 1616 Capitol Ave., Suite 74.516, MS 7204 P.O. Box 997377, MS 7204 Sacramento, CA 95899-7377
<b>Email:</b> <u><a href="mailto:Monica.regalado@cdph.ca.gov">Monica.regalado@cdph.ca.gov</a></u> <b>Withdrawal IFB 13-10048</b>

- 3) An originally signed withdrawal request is generally required before CDPH will return/release a bid package to a bidder. CDPH NEOP may grant an exception if the bidder informs CDPH NEOP that the bidder will submit a new or replacement bid package immediately following the withdrawal, but prior to the bid due date.

**c. Resubmitting a bid package**

After withdrawing a bid package, bidders may submit a new bid package according to the submission instructions. Replacement bid packages must be received at the stated place of delivery by the due date and time stated in Section B of this IFB, entitled "Time Schedule."

**5. Evaluation and selection**

This section describes, in general, the process that CDPH will use to evaluate timely bid packages.

**a. Bid opening/reading**

All bid packages properly received according to the IFB instructions on or before the bid due date will be publicly opened, read, and recorded.

**b. Bid package review**

- 1) After the bid opening and reading, bids are reviewed and evaluated. One or more evaluators will convene to review each timely bid package to confirm its responsiveness to the IFB requirements. This is a pass/fail evaluation.
- 2) If deemed necessary by CDPH, additional bidder documentation may be collected to confirm the claims made by each bidder and to ensure that each bidder is responsive to all IFB requirements.
- 3) If the materials submitted by a bidder do not prove, support or substantiate the claims made on the Required Attachment/Certification Checklist, as identified in Section H 4, Required attachments/documentation, the bid will be deemed non-responsive and rejected from further consideration.
- 4) If applicable, CDPH will adjust bid amounts for any claimed preference following confirmation of eligibility with DGS.

**c. Notice of Intent to Award**

CDPH will not post a Notice of Intent to Award, unless requested in writing per Public Contract Code (PCC) Section 10345 (a)(1). In response to the written request, CDPH will post the Notice of Intent to Award on the BidSync website [www.bidsync.com](http://www.bidsync.com).

**6. Contract award and protests**

**a. Contract award**

- 1) Award of the contract, if awarded, will be to the responsive and responsible bidder that offers the lowest cost. The lowest cost will be determined after CDPH adjusts bidder costs for applicable preferences and/or incentives.

**b. Settlement of tie bids**

- 1) In the event of a precise tie between the lowest responsive bid submitted by a non-small business that was granted small business subcontractor preference and the lowest responsive bid submitted by a certified small business or micro business, the contract will be awarded to the certified small business or micro business.
- 2) In the absence of a California law or regulation governing a specific tie, CDPH will settle all other tie bids in a manner CDPH determines to be fair and equitable (e.g., coin toss, lot drawing, etc.). In no event will CDPH settle a tie by dividing the work among the tied bidders.

**c. Protests**

Information regarding the protest of an award may be found by going to [http://www.documents.dgs.ca.gov/pd/poliproc/v2Chapt07\\_10\\_0730.doc](http://www.documents.dgs.ca.gov/pd/poliproc/v2Chapt07_10_0730.doc) under Chapter 7: Protest and Post Award Disputes. For additional details go to [www.dgs.ca.gov](http://www.dgs.ca.gov)

A protest to this bid must adhere to PCC Section 10345.

The envelope containing the written protest must clearly state: **"Protest Concerning IFB Number 13-10048 for the Department of Public Health"**. Protests **MUST** be filed with:

ORIGINAL	COPY
HAND or MAIL DELIVERY	
<p><b>Department of General Services</b>                      Office of Legal Services                      Attn: Protest Coordinator                      707 Third Street, 7<sup>th</sup> Floor, Suite 7-330                      West Sacramento, CA 95605</p>	<p><b>Department of Public Health</b>                      Contracts Management Unit                      Attn: Yolanda Murillo                      1616 Capital Ave, Suite 74.317, MS 1802                      Mail: P.O. Box 997377, MS 7204                      Sacramento, CA 95899-7377</p>

## 7. Disposition of bids

- a. All materials submitted in response to this IFB will become the property of the CDPH and, as such, are subject to the Public Records Act (GC Section 6250, et seq. and Civil Code Section 1798, et seq.). CDPH will disregard any language purporting to render all or portions of any bid package confidential.
- b. All documents submitted in response to this IFB and all documents used in the selection process (e.g., review checklists, letters of intent, etc.) will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and shall be available for public inspection.

## 8. Inspecting or obtaining copies of bids

### a. Who can inspect or copy bid materials

Any person or member of the public can inspect or obtain copies of bid materials.

### b. What can be inspected/copied and when

After the bid opening, all bids, bidders list, conference sign-in/attendance sheet, checklists and/or evaluation sheets become public records. These records shall be available for review, inspection and copying during normal business hours.

### c. Inspecting or obtaining copies of bid materials

Persons wishing to view or inspect any bid related materials must identify the items they wish to inspect and must make an inspection appointment by contacting **CDPH NEOP, Monica Regalado at (916) 449-5931**.

Persons wishing to obtain copies of bid materials must mail a written request to the CDPH office identified below. The requestor must identify the items they wish to have copied. Materials will not be released from CDPH premises for the purposes of making copies.

Unless waived by CDPH, a check covering copying and/or mailing costs must accompany the request. Copying costs, when applicable, are charged at a rate of **ten cents (\$0.10)** per page. CDPH will fulfill all copy requests as promptly as possible. Submit copy requests as follows:

#### Request for Copies – IFB 13-10048

##### Overnight Express/US Mail:

California Department of Public Health NEOP Branch Attn: Monica Regalado 1616 Capitol Ave., Suite 74.516, MS 7204 P.O. Box 997377, MS 7204 Sacramento, CA 95899-7377 Phone: (916) 449-5931
--

## 9. Verification of bidder information

By submitting a bid, bidders agree to authorize CDPH to:

- a. Verify any and all claims made by the bidder including, but not limited to verification of prior experience and the possession of other qualification requirements, and
- b. Check any reference identified by a bidder or other resources known by the state to confirm the bidder's business integrity and history of providing effective, efficient and timely services.

#### **10. CDPH rights**

In addition to the rights discussed elsewhere in this IFB, CDPH reserves the following rights.

##### **a. IFB corrections**

- 1) CDPH reserves the right to do any of the following up to the bid submission deadline:
  - a) Modify any date or deadline appearing in this IFB or the IFB Time Schedule.
  - b) Issue clarification notices, addenda, alternate IFB instructions, forms, etc.
  - c) Waive any IFB requirement or instruction for all bidders if CDPH deems said requirement or instruction unnecessary, erroneous or unreasonable.
  - d) Allow bidders to submit questions about any IFB change, correction or addenda via BidSync website [www.bidsync.com](http://www.bidsync.com), as stated in "Time Schedule."

##### **b. Collecting information from bidders**

- 1) If deemed necessary by CDPH, CDPH may request a bidder to submit additional documentation following the bid opening and/or evaluation. CDPH will advise the bidders orally, via email, or in writing of the documentation that is required and the time line for submitting the documentation. CDPH will follow-up oral instructions in writing by fax, email, or mail. Failure to submit the required documentation by the date and time indicated may cause CDPH to deem a bid non-responsive.
- 2) At its sole discretion, CDPH reserves the right to collect by mail, email, fax or other method, the following omitted and/or additional information:
  - a) Signed copies of any form submitted without a signature.
  - b) Data or documentation omitted from any submitted IFB attachment/form.
  - c) Information/material needed to clarify or confirm certifications or claims made by a bidder.
  - d) Information/material or form(s) needed to correct or remedy an immaterial defect in a bid package.

**c. Immaterial bid defects**

- 1) CDPH may waive any immaterial defect in any bid package and allow the bidder to remedy those defects. CDPH reserves the right to use its best judgment to determine what constitutes an immaterial deviation or defect.
- 2) CDPH's waiver of an immaterial defect in a bid package shall in no way modify this IFB or excuse a bidder from full compliance with all bid requirements.

**d. Correction of clerical or mathematical errors**

- 1) At its sole discretion, CDPH reserves the right to overlook, correct or require a bidder to remedy any obvious clerical or mathematical errors on a bid form.
- 2) If the correction of an error results in an increase or decrease in the total price, CDPH shall give the bidder the option to accept the corrected price or withdraw their bid.
- 3) Bidders may be required to initial corrections to costs and figures on the Bid Form if the correction results in an alteration of the cost(s) offered.
- 4) If a mathematical error occurs in a total or extended price and a unit price is present, CDPH will use the unit price to settle the discrepancy.

**e. Right to remedy errors**

CDPH reserves the right to remedy errors caused by:

- 1) CDPH office equipment malfunctions or negligence by agency staff.
- 2) Natural disasters (i.e., floods, fires, earthquakes, etc.).

**f. No contract award or IFB cancellation**

The issuance of this IFB does not constitute a commitment by CDPH to award a contract. CDPH reserves the right to reject all bids and to cancel this IFB if it is in the best interest of CDPH to do so.

Refer to Exhibit B and Exhibit D(F) for additional information.

**g. Contract amendments after award**

As provided in the Public Contract Code governing contracts (contracts) awarded by competitive bid, CDPH reserves the right to amend the contract after CDPH makes a contract award.

**L. Preference and Incentive Programs**

To confirm the identity of the lowest responsive bidder, CDPH will adjust the total bid cost for applicable claimed preference(s) and/or incentive(s). CDPH will apply preference and/or incentive adjustments to eligible bidders according to state regulations following verification of eligibility with DGS, Office of Small Business and DVBE Services (OSDS).

**1. Small/Micro Business Preference (preference not to exceed \$50,000)**

- a. A responsive bidder, certified as a small/micro business in a relevant business category or type, will be granted a preference up to five percent (5%) of the lowest responsive bid. Small business means a responsive/responsible bidder that is certified by the California DGS as a small business or micro business. The "service" category or business type will most likely apply to this procurement. Nonprofit Veteran Service Agencies (NVSA) are to view the instructions in Section L 3 of this IFB, entitled "Preference and Incentive Programs," paragraph 4.
- b. In granting small/micro business preference, no bid price will be reduced by more than five percent (5%). The cost adjustment is for computation purposes only and does not alter the actual cost offered by the bidder.
- c. To be certified as a California small/micro business and eligible for a bidding preference the business concerned must meet the state's eligibility requirements and must have submitted an application for small/micro business status no later than 4:00 p.m. on the bid submission deadline.
- d. Firms desiring small/micro business certification must obtain the Small Business Certification Application (i.e., STD 812 or other form) from DGS, OSDS, fully complete the application, and submit it to DGS as instructed in the application. Prospective bidding firms desiring small business certification assistance, may contact the DGS by the following means:
  - 1) (916) 322-5060 (24 hour recording and mail requests), or
  - 2) (916) 375-4940 (Small business assistance) or (800) 559-5529 (live operator-central receptionist), or
  - 3) Internet address: [www.pd.dgs.ca.gov/smbus/getcertified.htm](http://www.pd.dgs.ca.gov/smbus/getcertified.htm) or
  - 4) Fax: (916) 375-4950, or
  - 5) Email: [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov)

**2. Non-Small Business Subcontractor Preference (preference not to exceed \$50,000)**

- a. Non-small business means a responsive/responsible bidder that is not certified by the California Department of General Services as a small business or micro business.
- b. If the tentative low bidder is not a certified DVBE or small/micro business, a bid preference up to five percent (5%) is available to a responsive non-small business claiming twenty-five percent (25%) small business subcontractor participation with one or more small businesses. This preference is authorized pursuant to Title 2, California Code of Regulations Section 1896.6 (b) and Government Code Section 14835.
- c. If a bidder claims the non-small business subcontractor preference, the bid response must identify each proposed small business subcontractor, the participation percentage amount committed to each identified subcontractor, and substantial proof to enable verification of each subcontractor's small business status. The total small business subcontractor participation must equal no less than twenty-five percent (25%) of the total bid price or cost offered.

- d. To be granted preference, each proposed small business subcontractor must possess an active small business or micro business certification issued by the California DGS, must perform a "commercially useful function" under the contract, and the basic functions to be performed must be identified at the time of bidding.
- e. In granting the non-small business subcontractor preference, no bid price will be reduced by more than five percent (5%). The cost adjustment is for computation purposes only and does not alter the actual cost offered by the bidder.
- f. Complete **Non-Small Business Subcontractor Preference Acknowledgement and Bidder Declaration** to request the non-small business subcontractor preference.
- g. Refer to Section K of this IFB, entitled "Bid Requirements and Information," paragraph 6, b to learn how tie bids will be resolved.

CDPH has elected to waive the Disabled Veteran Business Enterprise (DVBE) participation requirements in this solicitation and does not opt to include the DVBE incentive.

**3. Nonprofit Veteran Service Agency (NVSA) Small business Preference (preference not to exceed \$50,000)**

- A. Pursuant to Military and Veteran Code Section 999.50 et seq., responsive/responsible NVSAs claiming small business/micro business preference and verified as such in the relevant category or business type prior to the bid submission due date will be granted a preference up to five percent (5%) of the lowest responsive bid, if the lowest responsive bid is submitted by a bidder not certified as a small business/micro business. The "service" category is the business type that will most likely apply to this procurement.
- B. In granting small business preference to NVSAs, no bid will be reduced by more than five percent (5%). The preference cost adjustment is for computation purposes only and does not alter the actual cost offered by the bidder.
- C. To be eligible for the NVSA small business preference, the business concern must:
  - 1) Request preference at the time of bid submission, and
  - 2) Become certified as a small business or micro business by the appropriate office of the California DGS prior to the bid submission due date.
- D. Refer to Section L of this IFB, entitled "Bid Requirements and Information," paragraph 6, b to learn how tie bids will be resolved.

**4. Other Preference Programs**

Information regarding other preference programs is available at the following Internet sites:

- a. Target Area Contract Preference Act (TACPA), [www.pd.dgs.ca.gov/edip/tacpa.htm](http://www.pd.dgs.ca.gov/edip/tacpa.htm).

- b. Local Agency Military Base Recovery Area (LAMBRA), [www.pd.dgs.ca.gov/edip/lambra.htm](http://www.pd.dgs.ca.gov/edip/lambra.htm).
- c. Enterprise Zone Act (EZA), [www.pd.dgs.ca.gov/edip/eza.htm](http://www.pd.dgs.ca.gov/edip/eza.htm).

## M. Contract Terms and Conditions

The winning bidder must enter into a contract that may contain the bidder's bid form or budget, a scope of work, standard contract provisions, and one or more of the contract forms and/or exhibits identified below. Other exhibits, not identified herein, may also appear in the resulting contract.

The exhibits identified in this section contain contract terms that require strict adherence to various laws and contracting policies. A bidder's unwillingness or inability to agree to the terms and conditions shown below or contained in any exhibit identified in this IFB may cause CDPH to deem a bidder non-responsible and ineligible for an award. CDPH reserves the right to use the latest version of any form or exhibit listed below in the resulting contract if a newer version is available.

In general, CDPH will not accept alterations to the General Terms and Conditions (GTC), the Special Terms and Conditions, or the Scope of Work; or alternate contract/exhibit language submitted by a prospective contractor. CDPH will consider a bid containing such provisions "a counter proposal" and CDPH may reject such a bid.

### 1. Contract forms/exhibits

#### Form/Exhibit Title

- STD 213 – Standard Agreement
- Exhibit A – Scope of Work
- Exhibit B – Budget Detail and Payment Provisions
- Exhibit C \* – General Terms and Conditions
- Exhibit D (F) – Special Terms and Conditions
- Exhibit E – Additional Provisions
- Exhibit F – Contractor's Release

### 2. Unanticipated tasks

In the event unanticipated or additional work must be performed that is not identified in this IFB, but in CDPH's opinion is necessary to successfully accomplish the scope of work, CDPH will request a bid quote for only the unanticipated work and amend the contract to include the additional work. Unless otherwise indicated, all terms and conditions appearing in the resulting contract and the salary, wage, unit rates and/or other expenses appearing on the bidder's Bid Form and Budget Detail Work Sheets (Attachment 1A – 1L and 2A – 2L) will apply to any additional work.

### 3. Resolution of differences between IFB and contract language

If an inconsistency or conflict arises between the terms and conditions appearing in the final contract and the proposed terms and conditions appearing in this IFB, any inconsistency or conflict will be resolved by giving precedence to the contract.

### 4. Subcontractors

All subcontractors identified in the bid, must be experts in their field and capable of performing the tasks for which they are hired to do.

If awarded the agreement, the Contractor must identify all of the SB/MB firms identified on the SB/DVBE Participation Summary and must be identified in the bidder's submission of Attachment 1, Bid Form Budget Detailed Worksheet and should also reference back to the activities being performed in Exhibit A, Scope of Work. (i.e. Subcontractor name: Exhibit A, Paragraph 5. D. 3-5.)

Subcontractor must adhere to the Subcontractor Requirements referenced in Exhibit D(F) in the Sample Contract Documents.

The CDPH reserves the right to approve substitutions of subcontractors as long as certified business participation levels remain unchanged.

# Required Attachments

Bid Form

**Annual Costs**

	Cost Per Month	Number of Months per Fiscal year	Cost per Fiscal year	Fiscal Year Dates
<b>A</b>	<u>\$YEAR 1</u>	X 3 months	\$	7/01/13 – 09/30/13
<b>B</b>	<u>\$YEAR 2</u>	X 12 months	\$	10/01/13 – 09/30/14
			<b>Total Cost = (A+ B)</b>	<b>\$</b>

Company Name \_\_\_\_\_

Name of Company Representative \_\_\_\_\_

Title/Position of Company Representative \_\_\_\_\_

Signature of Company Representative \_\_\_\_\_

Date Signed \_\_\_\_\_

Required Attachment / Certification Checklist

Qualification Requirements. I certify that I meet the following qualification requirements:		Confirmed by CDPH
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	My firm possesses at least three consecutive years of experience of the types listed in Item 1 of the IFB section entitled, "Qualification Requirements". That experience occurred within the past five years.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	My firm has read and is willing to comply with the terms, conditions, and contract exhibits addressed in the IFB section entitled, "Contract Terms and Conditions".	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	My firm is in good standing and qualified to conduct business in California. [Check "N/A" if not a Corporation.]	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	My firm is eligible to claim nonprofit status. [Check "N/A" if not a nonprofit organization.]	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	My firm has a past record of sound business integrity and a history of being responsive to past contractual obligations. My firm authorizes the State to confirm this claim.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	My firm will supply before contract execution, proof of self-insurance or copies of insurance certificates proving possession of appropriate liability insurance that meets the requirements stipulated in the IFB Section G entitled, "Qualification Requirements".	<input type="checkbox"/> Yes <input type="checkbox"/> No
Bid Content. I have completed and returned the following Attachments:		Confirmed by CDPH
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 1, Bid Form	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 1A – 1L and 2A – 2L Budget Detail Worksheets	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 2, Required Attachment / Certification Checklist	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 3, Business Information Sheet	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 4, Bidder References	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 5, Bidder Declaration	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 6, CCC 307 – Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 7, Payee Data Record	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 8, Darfur Contract Act	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 9, IRAN Contracting Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Attachment 10a, Non-Small Business Subcontractor Preference Request and Attachment 10b, Small Business Subcontractor/Supplier Acknowledgement Check "N/A" if not applying for this subcontractor preference.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	<b>California Businesses</b> - Copy of a current business license issued by the government jurisdiction in which the business is located. <u>Attach an explanation if a license copy cannot be supplied or there is reason to believe no license is required.</u> Check "N/A" if not a California business or no business license is required.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	<b>Corporations</b> - Either a copy of the Certificate of Status issued by California's Office of the Secretary of State or a copy of the bidding firm's <u>active</u> on-line status information downloaded from the California Business Portal website. Attach an explanation if the required documentation cannot be supplied. Check "N/A" if not a Corporation.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	<b>Nonprofit Organizations</b> - A copy of a current IRS determination letter indicating nonprofit or 501 (3) (c) tax exempt status. Check "N/A" if not a nonprofit organization.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> N/A	<b>Proof of Financial Stability</b> – Annual income statement and Quarterly or annual balance sheets for the last year or latest twelve-month period.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Name of Bidding Firm:		Signature
Printed Name/Title:		Date:

**Business Information Sheet**

A signature affixed hereon and dated certifies compliance with all bid requirements. The signature below authorizes the State to verify the claims made on this form.

Name of Bidding Firm:		CA Corp. No. (If applicable)	Federal ID Number
Name of Principal (If not an	Title:	Telephone Number	Fax Number
Street Address / P.O. Box		City	State Zip Code

**Type of Business Organization / Ownership (Check all that apply)**

<b>Ownership</b> <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Joint venture <input type="checkbox"/> Association	<b>Corporation</b> <input type="checkbox"/> Nonprofit <input type="checkbox"/> For Profit <input type="checkbox"/> Private <input type="checkbox"/> Public	<b>Governmental</b> <input type="checkbox"/> City/County, California State Agency, Federal Agency, State (other than California) <input type="checkbox"/> Other:	<b>Other Type of Entity</b> <input type="checkbox"/> Public or Municipal Corporation, School or Water District, California State College, University of California, Joint Powers Agency <input type="checkbox"/> Auxiliary College Foundation <input type="checkbox"/> Other:
--	--	--	--

**California Certified Small Business Status**     N/A     Microbusiness     Small business     NVSA  
 Certified By DGS    Certification No: \_\_\_\_\_    Expiration Date: \_\_\_\_\_

If certified, attach a copy of certification letter. If an application is pending, date submitted to DGS: \_\_\_\_\_

**Small Business Type (if applicable)**     N/A     Services     Non-Manufacturer     Manufacturer  
 Contractor (Construction Type): \_\_\_\_\_     Contractor's License Type: \_\_\_\_\_

**Veteran Status of Business Owner**     N/A (not a veteran or not certified by DGS)  
 Disabled Veteran Certified by DGS    Certification No. \_\_\_\_\_    Expiration Date: \_\_\_\_\_

If certified, attach a copy of certification letter. If an application is pending, date submitted to DGS: \_\_\_\_\_

**Disadvantaged Business Enterprise Status:**     N/A     Approved by the Cal Trans, Office of Civil Rights.  
Certification number issued by Cal Trans: \_\_\_\_\_    Expiration Date: \_\_\_\_\_

**Indicate possession of required licenses and/or certifications (if applicable):**     N/A (None required)

Contractor's State Licensing Board No.	PUC License Number CAL-T-	Required Licenses/Certifications (If applicable)
--	------------------------------	--

<b>Signature</b>	Date Signed
Printed/Typed Name	Title

**Public Records Information**

The above information is required for statistical reporting purposes. Completion of this form is mandatory. This information will be made public upon award of the contract and will be supplied to department contract staff, Department of General Services and possibly other public agencies. To access contract related records, contact the Contract Management Unit, 1501 Capitol Avenue, Suite 71.5178, MS 1802, P.O. Box 997377, Sacramento, CA 95899-7377 or call (916) 650-0100.

**Bidder References**

List at least three (3) client references that can attest to the Bidder's qualifications to fulfill the requirements of the Scope of Work. List the most recent first. Client references must also be provided for any subcontractors identified in the Bidder's response. Duplicate and attach additional pages as necessary. A negative reference check may result in bid rejection at the sole discretion of the CDPH.

**REFERENCE 1**

Name of Firm

Street address	City	State	Zip Code
----------------	------	-------	----------

Contact Person	Telephone number ( )
----------------	-------------------------

Dates of service	Value or cost of service
------------------	--------------------------

Brief description of service provided

**REFERENCE 2**

Name of Firm

Street address	City	State	Zip Code
----------------	------	-------	----------

Contact Person	Telephone number ( )
----------------	-------------------------

Dates of service	Value or cost of service
------------------	--------------------------

Brief description of service provided

**REFERENCE 3**

Name of Firm

Street address	City	State	Zip Code
----------------	------	-------	----------

Contact Person	Telephone number ( )
----------------	-------------------------

Dates of service	Value or cost of service
------------------	--------------------------

Brief description of service provided

If three references cannot be provided, explain why:

**BIDDER DECLARATION**

**1. Prime bidder information (Review attached Bidder Declaration Instructions prior to completion of this form):**

- a. Identify current California certification(s) (MB, SB, SB/NVSA, DVBE): \_\_\_\_\_ or None \_\_\_\_\_ (If "None," go to Item #2)
- b. Will subcontractors be used for this contract? Yes \_\_\_ No \_\_\_ (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.

- c. If you are a California certified DVBE: (1) Are you a broker or agent? Yes \_\_\_ No \_\_\_  
 (2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? Yes \_\_\_ No \_\_\_ N/A \_\_\_

**2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):**

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?

**CERTIFICATION: By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.**

## BIDDER DECLARATION INSTRUCTIONS

### All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.

- 1.a. Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:
- Microbusiness (MB)
  - Small Business (SB)
  - Small Business Nonprofit Veteran Service Agency (SB/NVSA)
  - Disabled Veteran Business Enterprise (DVBE)

- 1.b. Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No," proceed to Item #1.c. If "Yes," enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, SB/NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999(e)(2)(A) for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses. For questions regarding commercially useful function determinations made in conjunction with certification approval, contact the Department of General Services, Procurement Division, Office of Small Business and DVBE Certification (OSDC), OSDC Certification and Compliance Unit via email at: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.

- 1.c. This item is only to be completed by businesses certified by California as a DVBE.

- (1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No." The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- (2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If not bidding rental equipment, mark "N/A" for "not applicable."

2. If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page \_\_\_ of \_\_\_" on the form.

If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page \_\_\_ of \_\_\_" accordingly.

### 2. (continued) Column Labels

**Subcontractor Name, Contact Person, Phone Number & Fax Number**—List each element for all subcontractors.

**Subcontractor Address & Email Address**—Enter the address and if available, an Email address.

**CA Certification (MB, SB, DVBE or None)**—If the subcontractor possesses a current State of California certification(s), verify on the OSDC website ([www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)) that it is still valid and list all current certifications here. Otherwise, enter "None." [Note: A SB/NVSA should not be participating as a subcontractor]

**Work performed or goods provided for this contract**—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

**Corresponding % of bid price**—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

**Good Standing?**—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, and/or DVBE status
- Is not listed on the OSDC website as ineligible to transact business with the State

**51% Rental?**—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Enter "N/A" if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "Yes" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "No" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

Read the certification at the bottom of the page and complete the "Page \_\_\_ of \_\_\_" accordingly.

**CCC 307 – CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>	
<i>By (Authorized Signature)</i>			
<i>Printed Name and Title of Person Signing</i>			
<i>Date Executed</i>		<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about:
    - 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 counseling, rehabilitation and employee assistance programs; and,
    - 4) penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on the proposed Contract will:
    - 1) Receive a copy of the company's drug-free workplace policy statement; and,
    - 2) Agree to abide by the terms of the company's statement as a condition of employment on the Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both and Contractor may be ineligible for award of any future State contracts if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)
3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) 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 Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. **CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

**NOTE:** This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard Language/default.htm>.



**PAYEE DATA RECORD**

STD. 204 (Rev. 5/06)\_CDPH (Page 2)

1	<p><b>Requirement to Complete Payee Data Record, STD. 204</b></p> <p>A completed Payee Data Record, STD. 204, is required for payments to all non-governmental entities and will be kept on file at each State agency. Since each State agency with which you do business must have a separate STD. 204 on file, it is possible for a payee to receive this form from various State agencies.</p> <p>Payees who do not wish to complete the STD. 204 may elect to not do business with the State. If the payee does not complete the STD. 204 and the required payee data is not otherwise provided, payment may be reduced for federal backup withholding and nonresident State income tax withholding. Amounts reported on Information Returns (1099) are in accordance with the Internal Revenue Code and the California Revenue and Taxation Code.</p>						
2	<p>Enter the payee's legal business name. Sole proprietorships must also include the owner's full name. An individual must list his/her full name. The mailing address should be the address at which the payee chooses to receive correspondence. Do not enter payment address or lock box information here.</p>						
3	<p>Check the box that corresponds to the payee business type. Check only one box. Corporations must check the box that identifies the type of corporation. The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State provide their Taxpayer Identification Number (TIN). The TIN is required by the California Revenue and Taxation Code Section 18646 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the Internal Revenue Code Section 6109(a).</p> <p>The TIN for individuals and sole proprietorships is the Social Security Number (SSN). Only partnerships, estates, trusts, and corporations will enter their Federal Employer Identification Number (FEIN).</p>						
4	<p><b><u>Are you a California resident or nonresident?</u></b></p> <p>A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.</p> <p>A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident.</p> <p>For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.</p> <p>Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for State income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year.</p> <p>For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:</p> <table border="0"> <tr> <td>Withholding Services and Compliance Section:</td> <td>1-888-792-4900</td> <td>E-mail address: <a href="mailto:wscs.gen@ftb.ca.gov">wscs.gen@ftb.ca.gov</a></td> </tr> <tr> <td>For hearing impaired with TDD, call:</td> <td>1-800-822-6268</td> <td>Website: <a href="http://www.ftb.ca.gov">www.ftb.ca.gov</a></td> </tr> </table>	Withholding Services and Compliance Section:	1-888-792-4900	E-mail address: <a href="mailto:wscs.gen@ftb.ca.gov">wscs.gen@ftb.ca.gov</a>	For hearing impaired with TDD, call:	1-800-822-6268	Website: <a href="http://www.ftb.ca.gov">www.ftb.ca.gov</a>
Withholding Services and Compliance Section:	1-888-792-4900	E-mail address: <a href="mailto:wscs.gen@ftb.ca.gov">wscs.gen@ftb.ca.gov</a>					
For hearing impaired with TDD, call:	1-800-822-6268	Website: <a href="http://www.ftb.ca.gov">www.ftb.ca.gov</a>					
5	<p>Provide the name, title, signature, and telephone number of the individual completing this form. Provide the date the form was completed.</p>						
6	<p>This section must be completed by the State agency requesting the STD. 204.</p>						
<p><b>Privacy Statement</b></p> <p>Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, State, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.</p> <p>It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and State law imposes noncompliance penalties of up to \$20,000.</p> <p>You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the State agency(ies) with which you transact that business.</p> <p>All questions should be referred to the requesting State agency listed on the bottom front of this form.</p>							

## Darfur Contracting Act

Pursuant to Public Contract Code Section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a "scrutinized" company as defined in Public Contract Code (PCC) Section 10476. A scrutinized company is a company doing business in Sudan as defined in PCC Section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a State agency for goods or services (PCC Section 10477(a)) unless obtaining permission from the Department of General Services according to the criteria set forth in PCC Section 10477(b).

Therefore, to be eligible to submit a bid or proposal, please complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

1. \_\_\_\_\_ We do not currently have, or we have not had within the previous  
Initials three years, business activities or other operations outside of the United States.

OR

2. \_\_\_\_\_ We are a scrutinized company as defined in Public Contract Code  
Initials Section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code Section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

OR

3. \_\_\_\_\_ We currently have, or we have had within the previous three years,  
Initials business activities or other operations outside of the United States,  
+ certification but we certify below that we are not a scrutinized company  
below as defined in Public Contract Code Section 10476.

**CERTIFICATION For # 3.**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>Proposer/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County and State of</i>	

**YOUR BID OR PROPOSAL WILL BE DISQUALIFIED UNLESS YOUR BID OR PROPOSAL INCLUDES THIS FORM WITH EITHER PARAGRAPH # 1 OR # 2 INITIALED OR PARAGRAPH # 3 INITIALED AND CERTIFIED.**

**IRAN CONTRACTING CERTIFICATION**

Section 2200 et seq. of the California Public Contract Code prohibits a person from submitting a proposal for a contract with a public entity for goods and services of \$1,000,000 or more if that person is identified on a list created by the Department of General Services (DGS) pursuant to Section 2203(b) of the California Public Contract Code. The list will include persons providing goods or services of \$20,000,000 or more in the energy sector of Iran and financial institutions that extend \$20,000,000 or more in credit to a person that will use the credit to provide goods or services in the energy sector in Iran. DGS is required to provide notification to each person that it intends to include on the list at least 90 days before adding the person to the list.

In accordance with Section 2204 of the California Public Contract Code, the undersigned hereby certifies that:

It is not identified on a list created pursuant to Section 2203(b) of the California Public Contract Code as a person engaging in investment activities in Iran described in Section 2202.5(a), or as a person described in Section 2202.5(b), as applicable; or

It is on such a list but has received permission pursuant to Section 2203(c) or (d) to submit a bid or proposal in response to this Invitation for Bid (IFB) #13-10048, Nutrition Education Obesity Prevention Branch (NEOP) Media Buy.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed. This certification is made under the laws of the State of California.

<i>Proposer/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County and State of</i>	

**Non-Small Business Subcontractor Preference Instructions**

<p><b>Preference information</b></p>	<p>Non-small business bidders will be granted up to a five percent (5%) non-small business subcontractor preference on a bid evaluation by an awarding department when a responsive non-small business has submitted the lowest priced responsive bid and when a non-small business bidder:</p> <ol style="list-style-type: none"> <li>1. Has included in its bid a notification that it commits to subcontract at least twenty-five percent (25%) of its total bid price with one or more small businesses; and</li> <li>2. Has submitted a timely, responsive bid; and</li> <li>3. Is determined to be a responsible bidder; and</li> <li>4. Lists the small businesses it commits to subcontract with for a commercially useful function in the performance of the resulting contract.</li> </ol>
<p><b>Commercially useful function</b></p>	<p>A subcontractor is deemed to perform a commercially useful function if the subcontractor does the following:</p> <ol style="list-style-type: none"> <li>1. Is responsible for the execution of a distinct element of the contracted work; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions; and</li> <li>2. Is not further subcontracting a greater portion of the work than would be expected by normal industry practices.</li> <li>3. Is responsible, with respect to materials and supplies provided on the subcontract, for negotiating price, determining quality and quantity, ordering the material, installing (when applicable), and paying for the material itself.</li> </ol> <p>A subcontractor will not be considered as performing a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to achieve the appearance of participation.</p>
<p><b>How to calculate 25% subcontract participation</b></p>	<p>Unless otherwise instructed in the solicitation document, first determine the total dollar value or amount that will be bid for the entire contract term, then multiply this figure by 25% to determine how much of the bid price must be committed to small business subcontracts that will perform commercially useful functions including but not limited to things such as labor, supplies, materials, equipment, or support services.</p>
<p><b>Use of proposed subcontractors / substitution</b></p>	<p>If awarded the contract, the selected contractor must faithfully use each small business subcontractor proposed for use and identified in its preference request. No substitutions or alterations are allowed after a bid is submitted. Substitutions are only allowed after contract execution if the Contractor submits a Request for Substitution to the CDPH Program Contract Manager and that request is subsequently granted by CDPH.</p> <p>Small business subcontract substitution instructions will appear in the resulting contract in a clause entitled "Use of Small Business Subcontractors".</p>
<p><b>Preference request instructions</b></p>	<p>If preference is claimed, indicate so on the Bid Form and complete Attachment 10a identifying each small business or microbusiness subcontractor that will be used. For each subcontractor identified on Attachment 10a, obtain a completed and signed Small Business Subcontractor/Supplier Acknowledgment (Attachment 10b). Affix each Attachment 10b to Attachment 10a for submission with the bid response. If a signed Attachment 10b cannot be collected from each subcontractor in time for bid submission, indicate why. Submission of a signed Attachment 10b for each subcontractor listed on Attachment 10a is a prerequisite for contract award confirmation.</p> <p>Identify only currently certified small business or microbusiness subcontractors, as active certification is required and certification possession will be verified. The detailed budget worksheets, if required to be submitted in a bid, must list each subcontract service provider and its respective dollar value as identified on Attachment 8a. All proposed subcontracted services must appear in the Scope of Work.</p>

**Non-Small Business Subcontractor Preference Request**

List each certified small business or microbusiness that will be subcontracted with. To be granted a bidding preference, total small business or microbusiness subcontractor use must equal at least 25% of the total price or cost offered. Each named subcontractor must be actively certified as a small business or microbusiness by the bid submission due date and must acknowledge their participation as claimed herein via a Small Business Subcontractor/Supplier Acknowledgement (Attachment 10b). **Attach to this form an acknowledgement (Attachment 10b) signed by an authorized representative of each named subcontractor acknowledging their proposed use as described herein.**

**Name of certified small business (or microbusiness) Subcontractor**

Name of Subcontractor

Street address		City	State	Zip Code
Contact Person		Telephone number ( )		
Small Business Certification No.	Certification exp. date	Participation dollar value \$	Committed % of total bid %	

Brief description of the commercially useful function(s) to be performed and/or provided:

**Name of certified small business (or microbusiness) Subcontractor**

Name of Subcontractor

Street address		City	State	Zip Code
Contact Person		Telephone number ( )		
Small Business Certification	Certification exp. date	Participation dollar value \$	Committed % of total bid %	

Brief description of the commercially useful function(s) to be performed and/or provided:

**Name of certified small business (or microbusiness) Subcontractor**

Name of Subcontractor

Street address		City	State	Zip Code
Contact Person		Telephone number ( )		
Small Business Certification	Certification exp. date	Participation dollar value \$	Committed % of total bid %	

Brief description of commercially useful function(s) to be provided

*If necessary or desired, this form may be photocopied or reproduced in a like form for use in a bid response. If the bidding firm chooses to render a like copy by computer or other means, the instructions appearing on Attachment 10 may be omitted.*

**Small Business Subcontractor/Supplier Acknowledgement**

Name of Bidding Firm / Prime Contractor	CDPH IFB or RFP Number:
Total Dollar Value of Subcontractor Use	CDPH Bid Number:

This document confirms and acknowledges that the firm named below agreed to be identified by a bidding firm as a proposed small business or microbusiness or DVBE subcontractor or supplier for a CDPH procurement.

Subcontractor acknowledgements:

- A. The subcontracting firm named herein has committed to perform or provide services/labor or supplies equal to a percentage of the total bid/cost proposal price submitted by the bidding firm named above.
- B. The subcontracting firm named herein acknowledges the total dollar value of claimed participation identified above.
- C. The subcontracting firm named herein agrees to provide the following subcontracted services/labor or supplies under the resulting contract if the bidding firm named above receives the contract award:

Below and/or continued on an attachment is a brief description of the commercially useful function(s) that the subcontractor/supplier identified herein will provide or supply:

The subcontracting firm named herein understands it is its sole responsibility to contact the bidding firm named above to learn if the Proposer was awarded the contract pursuant to the referenced bid number and to confirm its subcontract contract. If the bidding firm named above receives an award based in part on non-small business subcontractor preference or the DVBE incentive, the bidding firm/contractor is obligated to use each small and/or microbusiness or DVBE subcontractor or supplier identified in its proposal unless a subcontractor substitution is requested after contract execution pursuant to Public Contract Code Section 4107 and Title 2 California Code of Regulations Section 1896.10.

The person signing below certifies the information supplied on this form is true and accurate to the best of its knowledge and agrees to allow the State to confirm this information, if deemed necessary.

Name of Proposed Subcontractor/Supplier		Date Signed
<b>Signature of Subcontractor/Supplier Representative</b>	Telephone number ( )	Email address (if applicable)
Printed/Typed Name	Title	

# **Sample Contract Forms/Exhibits**

**EXHIBIT A  
 (Scope of Work)**

**1. Service Overview**

Pursuant to California Health and Safety Code Section 104650(c), and the United States Department of Agriculture (USDA), Supplemental Nutrition Assistance Program Education (SNAP-Ed), Healthy, Hunger-Free Kids (HHFK) Act of 2010 (Public Law 11-296), Contractor TBD herein referred to as the Contractor, agrees to provide the California Department of Public Health (CDPH) the services described herein:

The Contractor will negotiate, place, traffic, steward and evaluate a mass media buy for federal fiscal year (FFY) 2013 and FFY 2014 for the Nutrition Education Obesity Prevention (NEOP) Branch advertising campaign. The ads will appear in all of California's Designated Market Areas (DMAs): Bakersfield, Chico, El Centro (California buy only), Eureka, Fresno, Los Angeles, Monterey, Palm Springs, Sacramento, San Diego, San Francisco and Santa Barbara. Television (TV) would be used as the primary medium, complemented by radio, Out-of-Home (OOH) and digital advertising.

**2. Service Location**

The services are to be performed in California at the Contractor's place of business, as well as various statewide facilities accessible to the Contractor within the state of California where the media will be purchased and/or services will be conducted.

**3. Service Hours**

Services shall be provided during the normal Contractor working hours, Monday through Friday, excluding Federal and State holidays.

**4. Project Representatives**

A. The project representatives during the term of this contract will be:

California Department of Public Health	Contractor
TBD, Contract Manager	Name of Contractor's Contract Manager [TBD]
Telephone:	Telephone: [To be determined]
Fax:	Fax: [To be determined]
Email:	Email:

B. Direct all inquiries to:

California Department of Public Health	Contractor
NEOP Branch	Section or Unit Name, if applicable [TBD]
P.O. Box 997377, MS 7204 Sacramento, CA 95899-7377	Attention: [To be determined] Street Address [To be determined] P.O. Box Number [To be determined] City, State, Zip Code [To be determined]
Telephone:	Telephone: [To be determined]
Fax:	Fax: [To be determined]
Email:	Email:

**EXHIBIT A**  
**(Scope of Work)**

- C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this contract.

**5. Services to be Performed**

The Contractor and/or Subcontractor will negotiate, place, traffic, steward and evaluate a mass media buy for FFY 2013, for proposed advertising buy dates of July-September 30, 2013 and FFY 2014, for proposed advertising buy dates of April-September 30, 2014. The ads will appear in all of California's DMAs.

- A. The Contractor and/or Subcontractor shall perform the following buy assurances for pre-existing advertisements: Please identify the responsible party for each deliverable in the Scope of Work.
1. All mediums: TV, Radio, OOH and Digital
    - a. Provide the Summary of Proposed Buys that are accurate and complete, inclusive of filling all empty columns across the spreadsheets. (See Attachments 1A – 1L and 2A – 2L).
    - b. Provide details of proposed media buy on 2 separate media flow charts one for FFY 2013 and FFY 2014. Also, updated flow charts should be provided as needed once media is negotiated and placed.
    - c. Implement a media plan that effectively delivers messaging to audiences comprised of CalFresh recipients and eligibles that will achieve USDA's requirement of delivering over 50% of purchased weight to individuals living in <185% of Federal Poverty Level (FPL) households.
    - d. Media buys must be designed to reach no less than 85% of California's low-income population for the entire contract term.
    - e. Schedule for continuity to deliver top of mind target audience awareness.
    - f. Target media vendors who provide the greatest concentrations and coverage of the target audience.
    - g. Utilize media vehicles that can most cost efficiently provide effective levels of target audience reach and frequency while minimizing waste to non-qualifying populations.
  2. Television
    - a. Achieve or exceed the weekly English and Spanish-language TV Target Rating Point (TRP) goals, by DMAs and within budget.
    - b. Achieve or exceed the African American cable TV number of spot goals in the Fresno, Sacramento, Los Angeles and San Diego DMAs.
    - c. Achieve TV buy in each market comprised of most major broadcast stations and dispersed among a variety of programs.
    - d. Provide guarantee TV rates four weeks prior to the TV start date, as time allows upon contract execution. This will allow the Contractor to cancel the negotiated buy should the proposed media buy not be approved in time to meet the scheduled start dates, thus avoiding payment liability.
    - e. Forfeit a portion of the contractor's compensation should the weighted delivery (weighted by market) of the English-language and Spanish-language TV TRPs fall below 90% of the goal.
    - f. Traffic to stations High Definition versions of existing ads.
  3. Radio
    - a. Achieve or exceed the number of radio TRP goals and by DMA within budget.

**EXHIBIT A**  
**(Scope of Work)**

- b. Provide guarantee radio rates four weeks prior to the radio start date, as time allows upon contract execution. This will allow the Contractor to cancel the negotiated buy should the proposed media buy not be approved in time to meet the scheduled start dates, thus avoiding payment liability.
  - c. Forfeit a portion of the Contractor's compensation should the weighted delivery (weighted by market) of the English and Spanish-language radio TRPs fall below 90% of the goal.
4. Out-of-Home (OOH)
- a. Achieve or exceed the weekly English and Spanish-language OOH by unit type; subject to availability and by DMA and within budget, using specified measurement methodology. See links to qualifying census tracts:  
<http://www.cdph.ca.gov/programs/cpns/Documents/Network-ACS0610AllRaces.pdf>  
<http://www.cdph.ca.gov/programs/cpns/Documents/Network-ACS0610Ethnicities.pdf>  
<http://www.cdph.ca.gov/programs/cpns/Documents/Network-ACS0610ARBlockGroups.pdf>  
<http://www.cdph.ca.gov/programs/cpns/Documents/Network-ACS0711AllRaces.pdf>  
<http://www.cdph.ca.gov/programs/cpns/Documents/Network-ACS0711Ethnicities.pdf>  
<http://www.cdph.ca.gov/programs/cpns/Documents/Network-ACS0711ARBlockGroups.pdf>
  - b. Submit OOH postings location details, including census tracts, once the buy has been secured.
  - c. Provide guarantee OOH rates 90 days prior to the OOH posting date, as time allows upon contract execution. This will allow the Contractor to cancel the negotiated buy should the proposed media buy not be approved in time to meet the scheduled start dates, thus avoiding payment liability.
  - d. Achieve or exceed OOH flights as specified by market and unit type, subject to availability. OOH should be purchased one month per flight.
  - e. Forfeit a portion of the contractor's' compensation should the English and Spanish-language units fall below 90% of the goal.
5. Digital
- a. Achieve or exceed the geodemographic targeted monthly impressions for English and Spanish-language digital goals, using specified measurement methodology and within budget. See links to qualifying census tracts.
  - b. Agree to use behavioral, contextual and geodemographic targeting for all digital buys.
  - c. Provide guarantee digital rates four weeks prior to the start date as time allows upon contract execution. This will allow the Contractor to cancel the negotiated buy should the proposed media buy not be approved in time to meet the scheduled start dates, thus avoiding payment liability.
- B. Negotiate all mediums per Budget Detail Worksheets (Attachments 1A – 1L and 2A – 2L).
1. Target audiences
    - a. Adults living in households below 185% of the Federal Poverty Level; specifically multicultural English-language dominant African American, Caucasian and Latina women with school-aged children; and Spanish-language dominant women with school-aged children.
    - b. Women 18-54 for English-language programming and Women 18-49 for Spanish-language programming.
    - c. Men living in low-income households are a strong secondary target audience.

**EXHIBIT A**  
**(Scope of Work)**

2. Dayparts and percent buying mix for broadcast. Use dayparts below or similar based on industry standards.
    - a. 10% - Early Morning (EM).
    - b. 50% - Daytime (DT).
    - c. 40% - Early Fringe (EF).
    - d. Total ratings should not exceed 20% in weekend placement for each daypart.
    - e. Contractor will ensure buys reach optimization by purchasing a combination of network affiliates and independent stations for each daypart, in each market.
    - f. No more than two spots should appear per one hour of programming.
  3. Types of units per medium
    - a. TV: 30 second spots.
    - b. Radio: 60 seconds spots.
    - c. OOH: 30 sheet and 8-sheet.
    - d. Digital: video:30, banners: 300x250, 728x90, 160x600.
  4. Additional media guidelines
    - a. Third party media research tools should be used for all broadcast placements.
    - b. Posting Live is preferred in all markets.
    - c. For Spanish-language TV TRPs, please use Nielsen Station Index (NSI) converted to Hispanic viewers for calculations.
    - d. OOH and digital advertising should be planned and negotiated to appear in qualifying low-income census tracts in order to optimize reach of low-income populations.
    - e. For digital buys use geodemographical data.
- C. Placement
1. NEOP reserves the right for a one-time change for each media buy flow chart, after awarding the contract. Budget parameters will not change.
  2. Contractor shall place (commit) the proposed buys with media vendors once the Media Authorizations from NEOP are signed.
- D. Traffic
- Upon award of contract the NEOP will provide guidance on specific placement of up to:
1. English: 5 TV, 3 radio, 6 OOH, 6 digital advertisements
  2. Spanish-language: 3 TV, 2 radio, 4 OOH, 4 digital advertisements
- E. Stewardship
1. Contractor will steward all media buys on a weekly basis to ensure purchased schedules are placed as ordered and as needed to reach required TRPs/impressions.
  2. Should any placements be missed due to pre-emption, or for technical reasons, make goods must be secured at equal or higher value than the missed ads, and within four weeks of the missed placement dates. If media outlets cannot accommodate make goods within a four week period after the last flight, monetary credit to NEOP, CDPH is acceptable.
  3. Provide guarantee to steward the buy to ensure ordered ads are being placed appropriately.

**EXHIBIT A**  
**(Scope of Work)**

4. Thirty days prior to OOH postings, Contractor will provide exact locations of all outdoor 8-sheet and 30-sheet posters, report the census tracts which they are located within, and confirm whether or not the census tracts qualify as low-income per the list of qualifying census tracts. This shall be done on a continuous basis if outdoor posters rotate to new locations.
- F. Reporting Procedures
1. Submit a post-buy analysis at the end of each buying cycle, for all media types of actual media placement including actualized ratings, spots or impressions. Summary information with detail should be provided in an electronic format and the Contractor should discuss the results upon request.

**Exhibit B**  
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 rates and/or allowable costs specified herein. Contractor's Compensation not to exceed 8% of net cost for each medium.
- B. Invoices shall include the contract number and shall be submitted in triplicate not more frequently than monthly in arrears to:

California Department of Public Health  
NEOP Branch  
1616 Capitol Ave., Suite 74.516  
P.O. Box 997377, MS 7204  
Sacramento, CA 95899-7377  
Attn: Monica Regalado

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 contract.

- C. Invoices shall:
  - 1) Be submitted on Contractor letterhead. If invoices are not on produced letterhead invoices must be signed by an authorized representative certifying that the expenditures claimed represents actual expenses for the service performed under this contract.
  - 2) Bear the Contractor's name as shown on the contract.
  - 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 contract. Subject to the terms of this contract, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this contract and approved by the NEOP Branch.

**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 Contract does not appropriate sufficient funds for the program, this Contract 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 Contract and Contractor shall not be obligated to perform any provisions of this Contract.
- 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 Contract with no liability occurring to the State, or offer an contract amendment to Contractor to reflect the reduced amount.

**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.

**Exhibit B**  
Budget Detail and Payment Provisions

**4. Amounts Payable**

- A. The amounts payable under this contract shall not exceed:
  - 1) \$\_\_\_\_\_ for the period of 7/01/13 through 09/30/13.
  - 2) \$\_\_\_\_\_ for the period of 10/01/13 through 09/30/14.
- 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. Contractor will be reimbursed for services satisfactorily performed based on the Exhibit B, Budget Detailed Worksheets Attachments 1A – 1L and 2A – 2L.
- D. The Contractor must maintain records reflecting actual expenditures for each state fiscal year covered by the term of this contract.

**5. 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 contract costs.
- B. Contractor shall maintain for review and audit and supply to the NEOP Branch upon request, adequate documentation of all expenses claimed pursuant to this contract to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because of 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 a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. Costs and/or expenses deemed unallowable are subject to recovery by CDPH, NEOP.
- E. The contractor will reimburse the State for each unused screening tool kit that is returned to contractor.

**6. Timely Submission of Final Invoice**

- A. A final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this contract, 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 contract 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.

**Exhibit B**  
Budget Detail and Payment Provisions

- C. The Contractor is hereby advised of its obligation to submit to the state, with the final invoice, a completed copy of the **“Contractor’s Release (Exhibit F)”**.

**Special Terms and Conditions**

*(For federally funded service contracts or agreements and grant agreements)*

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Public Health" and "CDPH" shall have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

**Index of Special Terms and Conditions**

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process	31. Lobbying Restrictions and Disclosure Certification
16. Financial and Compliance Audit Requirements	32. Additional Restrictions

## 1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

## 2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from CDPH under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDPH's Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by CDPH upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

## 3. Procurement Rules

(Applicable to all agreements in which equipment, property, commodities and/or supplies are furnished by CDPH or expenses for said items are reimbursed with state or federal funds.)

### a. Equipment definitions

Wherever the term equipment /property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
  - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.
- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or

through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
  - (a) 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, or bid contract in which, to his or her knowledge, he or she has a financial interest.
  - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
  - (c) Procurements shall be conducted in a manner that provides for all of the following:
    - [1] Avoid purchasing unnecessary or duplicate items.
    - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
    - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, 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.
- e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- f. 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 Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. 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.
- h. CDPH 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 b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

#### **4. Equipment Ownership / Inventory / Disposition**

(Applicable to agreements in which equipment and/or property is furnished by CDPH and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, Paragraph a, shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement shall be considered state equipment and the property of CDPH.

- (1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by CDPH or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the CDPH Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDPH's Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDPH Funds) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the CDPH Program Contract Manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager. Contractor shall:

(a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

(b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.

(c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDPH shall be under no 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 and/or property.

- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

- (1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.

- e. Unless otherwise stipulated by the program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH agreement.

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and

shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

**g. Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under this Agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten 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 purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, 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 Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

**Automobile Liability Insurance**

- (a) The Contractor, by signing this Agreement, 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 combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, 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 CDPH Program Contract Manager. The certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies.
- (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 Agreement or until such time as the motor vehicle is returned to CDPH.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (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 Agreement, 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, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior

written notice to the State (California Department of Public Health (CDPH)).

- [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
  - [3] The insurance carrier shall notify CDPH, 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 each agreement number for which the 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 (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (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, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

## 5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- 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. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services costing \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
  - (2) The State may identify the information needed to fulfill this requirement.
  - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
    - (a) A local governmental entity or the federal government,
    - (b) A State college or university from any State,
    - (c) A Joint Powers Authority,
    - (d) An auxiliary organization of a California State University or a California community college,
    - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
    - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
    - (g) Entities of any type that will provide subvention aid or direct services to the public,
    - (h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:  
<http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm>.
    - (i) Entities whose name and budgeted costs have been submitted to CDPH in response to a competitive solicitation.
- b. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

- (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
- e. CDPH assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- h. 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 *(Agreement Number)* and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. 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, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 31 or other numbered provisions herein that deemed applicable.

## 6. Income Restrictions

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

## 7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- 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 Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this

Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- d. 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 Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
  - (1) If this Agreement 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.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

## 8. Site 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 hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized 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.

## 9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

- d. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

## 10. Intellectual Property Rights

### a. Ownership

- (1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
  - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

### b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to CDPH, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

**c. Copyright**

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

**d. Patent Rights**

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to CDPH a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH in securing United States and foreign patents with respect thereto.

**e. Third-Party Intellectual Property**

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

**f. Warranties**

- (1) Contractor represents and warrants that:
  - (a) It is free to enter into and fully perform this Agreement.
  - (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
  - (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
  - (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
  - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
  - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.
  - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
  - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
- (2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

**g. Intellectual Property Indemnity**

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

- (2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

#### **h. Federal Funding**

In any agreement funded in whole or in part by the federal government, CDPH may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

#### **i. Survival**

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

### **11. Air or Water Pollution Requirements**

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

### **12. Prior Approval of Training Seminars, Workshops or Conferences**

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of 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 this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

### **13. Confidentiality of Information**

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the

Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager 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 Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, 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.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

#### **14. Documents, Publications and Written Reports**

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements 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.

#### **15. Dispute Resolution Process**

- a. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
  - (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
  - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized 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, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

#### 16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
  - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
  - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
  - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
    - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

- (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- (4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the CDPH program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDPH Program Contract Manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
- e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The CDPH program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

## 17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

**18. Novation Requirements**

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH 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 of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this Agreement to formally implement the approved proposal.

**19. Debarment and Suspension Certification**

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
  - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
  - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
  - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH Program Contract Manager.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this Agreement for cause or default.

**20. Smoke-Free Workplace Certification**

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be

permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

#### **21. Covenant Against Contingent Fees**

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *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, CDPH shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

#### **22. Payment Withholds**

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

#### **23. Performance Evaluation**

(Not applicable to grant agreements.)

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

#### **24. Officials Not to Benefit**

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

#### **25. Four-Digit Date Compliance**

(Applicable to agreements in which Information Technology (IT) services are provided to CDPH or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

## **26. Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

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 Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

## **27. Use of Small, Minority Owned and Women's Businesses**

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

## **28. Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

## **29. Union Organizing**

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

### 30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
  - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
  - (2) Director's and executive committee member's fees.
  - (3) Incentive awards and/or bonus incentive pay.
  - (4) Allowances for off-site pay.
  - (5) Location allowances.
  - (6) Hardship pay.
  - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
  - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
  - (1) Be necessary and reasonable for the performance of the Agreement.
  - (2) Be determined in accordance with generally accepted accounting principles.
  - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. Earned/Accrued Compensation
  - (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
  - (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
  - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

### 31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
  - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
  - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
  - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

## b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

## 32. Additional Restrictions

(Applicable to all contracts funded in whole or in part with funding from the federal Departments of Labor, Health and Human Services (including CDC funding), or Education.)

Contractor shall comply with the restrictions under Division F, Title V, Section 503 of the Consolidated Appropriations Act, 2012 (H.R. 2055), which provides that:

"SEC. 503.(a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control."

STATE OF CALIFORNIA  
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH  
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Printed Name of Person Signing for Contractor

\_\_\_\_\_  
Contract / Grant Number

\_\_\_\_\_  
Signature of Person Signing for Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

After execution by or on behalf of Contractor, please return to:

California Department of Public Health

CDPH reserves the right to notify the contractor in writing of an alternate submission address.



**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (M).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**Exhibit E**  
Additional Provisions

**1. Cancellation / Termination**

- A. This contract may be cancelled by CDPH without cause upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this contract immediately for cause. The Contractor may submit a written request to terminate this contract only if CDPH substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this contract.
- D. Contract termination or cancellation shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this contract and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this contract.

**2. Avoidance of Conflicts of Interest by Contractor**

- A. CDPH intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDPH reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDPH review and prior approval.
- B. Conflicts of interest include, but are not limited to:
  - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
  - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDPH is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDPH to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDPH and cannot be resolved to the satisfaction of CDPH, the conflict will be grounds for terminating the contract. CDPH may, at its discretion

**Exhibit E**  
Additional Provisions

upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

**3. Use of Small Business Subcontractors**

(Only applicable to contracts awarded in part due to the granting of non-small business subcontractor preference where the Contractor committed to use small business subcontractors for at least 25% of the initial contract cost or amount bid.)

- A. All Non-Small Business Subcontractor Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein and made a part of this contract by this reference.
- B. Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDPH, in writing (including email or fax), prior to using a proposed substitute subcontractor.
- C. Requests for substitution must be approved by the funding program and must include, at a minimum:
  - 1) An explanation of the reason for the substitution.
  - 2) A written description of the business enterprise that will be substituted, including its small business certification status.
  - 3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the contract will be fulfilled.
  - 4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the contract pursuant to Title 2, California Code of Regulations §1896.6.
- D. CDPH may consent to the substitution in any of the situations set forth in Public Contract Code Section 4107 of the Subletting and Subcontracting Fair Practices Act.
- E. Prior to the approval of the prime contractor's request for the substitution, the funding program shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) working days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, CDPH shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by CDPH on the prime contractor's request for substitution.
- F. Failure of the contractor to subcontract with the small businesses listed in its bid or proposal to CDPH, or failure to follow applicable substitution rules and regulations may be grounds for the Department of General Services to impose sanctions pursuant to Government Code Section

**Exhibit E**  
Additional Provisions

14842.5 and Title 2, California Code of Regulations § 1896.16. In the event such sanction are to be imposed, the Contractor shall be notified in writing and entitled to a hearing pursuant to Title 2, California Code of Regulations § 1896.18 and § 1896.20.

- G. If requested by CDPH, Contractor agrees to provide documentation/verification, in a form agreed to by CDPH, that small business subcontractor usage under this contract complies with the commitments specified during the contractor selection process.

## Contractor's Release

### Instructions to Contractor:

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

### Submission of Final Invoice

Pursuant to contract number 13-10048 entered into between the State of California Department of Public Health (CDPH) and the Contractor (identified below), the Contractor does 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 a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

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

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

Unless CDPH has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDPH contract, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDPH, at CDPH'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.

**ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE**

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

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

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