

## **Exhibit E Additional Provisions**

### **1. Evaluation of Contractor**

Performance of the Contractor under this Agreement will be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4), and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and over \$5,000.

### **2. Performance Evaluation**

- A. The Contractor's performance under this agreement shall be evaluated at the conclusion of the term of this agreement. The evaluation shall include, but not be limited to:
- 1) Whether the contracted work or services were completed as specified in the agreement, and reasons for and amount of any cost overruns.
  - 2) Whether the contracted work or services met the quality standards specified in the agreement.
  - 3) Whether the Contractor fulfilled all requirements of the agreement.
  - 4) Factors outside the control of the Contractor, which caused difficulties in contractor performance. Factors outside the control of the Contractor shall not include a Subcontractor's poor performance.
- B. The evaluation of the Contractor shall not be a public record (PCC 10370).

### **3. Prohibited Follow-on Contracts**

- A. No person, firm, or subsidiary awarded a consulting services agreement is prohibited from submit a bid or be awarded an agreement for services or goods suggested, in the end product of the awarded consulting services agreement
- B. Paragraph A does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services agreement which totals no more than ten 10% percent of the total monetary value of the consulting services agreement.
- C. Paragraphs A and B do not apply to services agreements subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.(Contract with Private architects, engineering, land surveying and contraction project management firms).

### **4. Insurance Requirements**

Contractor shall comply with the following insurance requirements:

#### **A. General Provisions Applying to All Policies**

- 1) Coverage Term – Coverage needs to be in force for the complete term of the Agreement. If insurance expires during the term of the Agreement, a new certificate and required

## Exhibit E Additional Provisions

endorsements must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must comply with the original Agreement terms.

- 2) Policy Cancellation or Termination and Notice of Non-Renewal – Contractor shall provide to the CDPH within five (5) business days following receipt by Contractor a copy of any cancellation or non-renewal of insurance required by this Contract. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the CDPH may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 3) Premiums, Assessments and Deductibles – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- 4) Primary Clause – Any required insurance contained in this Agreement shall be primary and not excess or contributory to any other insurance carried by the CDPH.
- 5) Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VI. If Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- 6) Endorsements – Any required endorsements requested by the CDPH must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- 7) Inadequate Insurance – Inadequate or lack of insurance does not negate Contractor’s obligations under the Agreement.
- 8) Use of Subcontractors - In the case of Contractor’s utilization of Subcontractors to complete the contracted scope of work, Contractor shall include all Subcontractors as insured under Contractor’s insurance or supply evidence of the Subcontractor’s insurance to the CDPH equal to policies, coverages, and limits required of Contractor.

### B. Insurance Coverage Requirements

Contractor shall display evidence of certificate of insurance evidencing the following coverage:

- 1) Commercial General Liability – Contractor shall maintain general liability with limits not less than \$1,000,000 per occurrence for bodily injury and property damage combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent Contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor’s limit of liability. The policy shall be endorsed to include, “The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned.” This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 2) Automobile Liability (when required) – Contractor shall maintain motor vehicle liability insurance with limits not less than \$1,000,000 combined single limit per accident. Such

## **Exhibit E Additional Provisions**

insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Agreement involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required. The policy shall be endorsed to include, "The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

- 3) Worker's Compensation and Employer's Liability (when required) – Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of \$1,000,000 are required. When work is performed on State owned or controlled property the policy shall contain a waiver of subrogation endorsement in favor of the State. This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 4) Professional Liability (when required) – Contractor shall maintain professional liability covering any damages caused by a negligent error; act or omission with limits not less than \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of Agreement work.
- 5) Environmental/Pollution Liability (when required) – Contractor shall maintain pollution liability for limits not less than \$1,000,000 per claim covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site as well as transportation and proper disposal of hazardous materials. The policy shall be endorsed to include, "The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 6) Aircraft Liability (when required) - Contractor shall maintain aircraft liability with a limit not less than \$3,000,000. The policy shall be endorsed to include, "The State of California, its officers, agents, employees and servants as additional insured, but only insofar as the operations under this Agreement." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

### **5. Incorporation of Proposal or Bid**

The Contractor's proposal or bid is not attached hereto, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal or bid, this Agreement shall be controlling.

### **6. Subcontract Requirements**

- A. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services exceeding \$5,000 for any articles, supplies, equipment, or services. The Contractor shall obtain at least three complete quotations which should be submitted or adequate justification provided for the absence of bidding.

## Exhibit E Additional Provisions

- 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) exceeding \$5,000 are subject to the prior review and written approval of 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 and shall be the subcontractor's sole point of contact for all matters related to the performance and payment during the term of 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."

### 7. Procurement Rules

Except as provided in Exhibit B, Attachment(s):

#### A. Equipment definitions

Wherever the term equipment and/or property are used, the following definitions shall apply:

- 1) **Major equipment:** 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.

## **Exhibit E Additional Provisions**

- 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. 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.
  
  - C. 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.
  
  - D. 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.
- 8. Equipment Ownership / Inventory / Disposition**

- A. Wherever the terms equipment and/or property are used under this provision, the definitions in Provision 12, 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 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).

## Exhibit E Additional Provisions

- 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.

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.