



## Memo

**To:** Commissioners, First 5 Ventura County

**From:** Jennifer Johnson, Director of Operations (On behalf of the Administration/Finance Committee)

**Date:** March 17, 2016

**Re:** Recommendation to revise contract boilerplate for funded programs

---

### **Background**

The standard boilerplate contract for funded programs is reviewed on an annual basis (before the beginning of each new fiscal year). Commission staff reviews insurance requirements, identifies any new provisions that may need to be added due to any issues encountered in the prior year, and looks for opportunities to clarify language and streamline the boilerplate. Modifications are developed in consultation with the Commission's insurance broker and reviewed by legal counsel.

#### *Multi-Year Contracting*

To further streamline the Commission's contracting practice, it is proposed that one multi-year contract with service provisions and budgets for all three years be issued to most funded partners for FY 2016-19. Funded partners would have the ability to amend budgets and service provisions, if needed. On an exception basis, if the projected services and/or budget cannot be determined for more than one year because of certain factors (e.g., unknown leveraged funding) the current method of issuing a contract with annual amendments would continue to be implemented.

#### *Unspent Funds*

With the approval of three-year allocations for funded partners, it is recommended that funded partners be allowed to utilize unspent funds based on criteria that will be developed and approved by the Commission. Unspent funds that result after the end of FY 2016-17 and FY 2017-18 for use within the funding period of FY 2016-19 may be considered with submission of a detailed plan in accordance with the Commission's approved criteria.

### **Recommendation**

The recommendation is to revise the contract boilerplate for funded programs and implement multi-year contracting, as attached. Highlights of the revisions to the boilerplate include:

- Timeline requirements for submission of subcontractor service provisions and budgets are updated to align with a multi-year contract.
- Clarify security deposit shall be returned at the end of the contract term.
- Clarify provision for the purchase of fixed assets to include "infrastructure projects", in accordance with the Commission's policy.

- Implement multi-year contracting whereby one multi-year contract with service provisions and budgets for all three years will be issued to funded partners for FY 2016-19.
  - Allows funded programs to utilize unspent funds. As a result, the provision in Exhibit D stating that funds cannot be carried-over has been eliminated.



## BOILERPLATE CHANGES

The following provisions are under consideration for modification. New language is reflected in underlined font. Omitted language is reflected in strikethrough font.

- 2.10 SUBCONTRACTS.** Functions undertaken by CONTRACTOR may be carried out under subcontracts. However, CONTRACTOR may not delegate its duties or obligations nor assign its rights hereunder, either in whole or in part, without prior written consent of COMMISSION. Any such attempted delegation or assignment without prior consent shall be void. Any change whatsoever in the corporate structure of CONTRACTOR, the governing body of CONTRACTOR, the management of CONTRACTOR or the transfer of assets in excess of ten (10) percent of the total assets of CONTRACTOR shall be deemed an assignment of benefits under the terms of this Agreement requiring COMMISSION approval. All subcontracts, inclusive of service provisions and budgets, shall be in writing and copies provided to COMMISSION within ~~sixty (60)~~ thirty (30) days of their execution ~~of this agreement, including any subsequent amendments~~. No subcontract shall alter in any way any legal responsibility of CONTRACTOR to COMMISSION. All subcontractors will be provided a copy of this Agreement, and any subcontract must state that any work performed must be consistent with this Agreement. COMMISSION has the right to refuse reimbursement for obligations incurred under any subcontract, which do not comply with the terms of this Agreement. In each subcontract, CONTRACTOR shall include all provisions that the COMMISSION may require. COMMISSION shall make these provisions available to CONTRACTOR.
- 2.35 SECURITY DEPOSITS.** If CONTRACTOR uses COMMISSION funds as its security deposit for leasing property in relation to the performance of this Agreement, CONTRACTOR shall return to COMMISSION any balance thereof within 45 days of the termination of the lease. However, if CONTRACTOR'S ~~funding period contract term~~ ends prior to the termination of the lease, then any balance of the security deposit shall be returned to COMMISSION within 45 days of the close of the CONTRACTOR'S ~~funding period contract term~~.
- 4.12 PURCHASE OF FIXED ASSETS & INFRASTRUCTURE PROJECTS.** CONTRACTOR shall not purchase any fixed asset or implement an infrastructure project in excess of \$5,000 under the terms of this Agreement, ~~unless prior written permission is obtained from the COMMISSION~~.

**Revisions to Exhibit D, Payment Method for three (3) year term – see attached**

**NAME OF PROGRAM**

**Contract Term: July XX, 20XX through June XX, 20XX**

**PAYMENT METHOD [Provisions for contracts on a cost reimbursement basis]**

CONTRACTOR shall be paid in accordance with the payment method as outlined below, for services rendered, provided that CONTRACTOR is not in default under any provisions of this Agreement.

1. CONTRACTOR shall be paid in arrears, upon receipt of a quarterly invoice with adequate supporting documentation for actual costs incurred for services rendered. CONTRACTOR will be paid actual costs only, even if the costs estimated in CONTRACTOR's proposal, budget, or this Agreement estimated a different amount.
2. Reimbursement for the ~~funding period~~contract term of July 1, 20xx through June 30, 20xx shall not exceed \$000,000.00, based on the terms of the Agreement and in accordance with Exhibit C and the services described in Exhibit B.
- ~~3. Remaining funds from a prior funding period as set forth above in paragraph 2 may not be carried over to the next funding period.~~

**PAYMENT METHOD [Provisions for fee for service contracts]**

CONTRACTOR shall be paid in accordance with the payment method as outlined below, for services rendered, provided that CONTRACTOR is not in default under any provisions of this Agreement.

1. CONTRACTOR shall be paid in arrears, upon receipt of a quarterly invoice based on the established [rates/fees] in accordance with Exhibit X with adequate supporting documentation for services rendered.
2. Reimbursement for the ~~funding period~~contract term of July 1, 20xx through June 30, 20xx shall not exceed \$000,000.00, based on the terms of the Agreement and in accordance with the services described in Exhibit B.
- ~~3. Remaining funds from a prior funding period as set forth above in paragraph 2 may not be carried over to the next funding period.~~

**PAYMENT METHOD [Provisions for contracts on advance payment basis]**

CONTRACTOR shall be paid in accordance with the payment method as outlined below, for services rendered, provided that CONTRACTOR is not in default under any provisions of this Agreement.

1. CONTRACTOR shall be paid in advance, in monthly installments, provided that CONTRACTOR is not in default under any provisions of this agreement as follows:
  - a. \$x,xxx.xx for the funding period of July 1, 20xx through June 30, 20xx
2. Advance payment will be disbursed on or about the first day of each month for the term of the contract. The last installment or remaining balance due for each funding period will be released within 30 days upon receipt of a complete and accurate Year-end Progress and Expenditure Report.
3. Payments for the ~~period~~contract term of July 1, 20xx through June 30, 20xx shall not exceed \$000,000.00 in accordance with Exhibit C and the services described in Exhibit B.
4. Payments shall be based on the terms of the Agreement. Allowable expenditures shall be based on [actual costs incurred in accordance with Exhibit C for services rendered. CONTRACTOR will be paid actual costs only, even if the costs estimated in CONTRACTOR's proposal, budget, or this Agreement estimated a different amount.] OR [the established {rates/fees} in accordance with Exhibit X] with adequate supporting documentation for services rendered.

5. At its sole discretion, COMMISSION may increase, decrease, or completely eliminate advance payments based upon COMMISSION's assessment of CONTRACTOR's performance, the activity level of the program, the need for advance payments, and other factors COMMISSION deems appropriate.
6. COMMISSION may request CONTRACTOR to submit a monthly report of expenditures during the final months of the contract period, if it appears that the CONTRACTOR may not utilize the full contract amount.
7. If at the end of each funding period as set forth above in paragraph 1, CONTRACTOR has not utilized funds advanced, CONTRACTOR shall return that amount to COMMISSION within forty-five (45) days of the close of the funding period.