MISCELLANEOUS ADMINISTRATIVE POLICIES

OVERVIEW

Background

This Section covers general policies relating to agreements between agencies and The Department of Health Services (DHS) Maternal, Child, and Adolescent Health/Office of Family Planning (MCAH/OFP) Branch.

Purpose

The purpose of this section is to provide information regarding Administrative policies regarding miscellaneous topics relating to the Department of Health Services, Maternal, Child and Adolescent Health/Office of Family Planning Branch.

Contents of Order

The contents of this Section are:

TOPICS	See Page
Miscellaneous Agreement Policies	2
Approval	2
Amendment	2
Assignment	3
Disputes	3
Termination for Cause	3
Indemnification	3
Confidentiality of Information	4
Income Restriction	4
Record Retention	5-6
Site Inspection	7
Federal Contract Funds	7
Covenant Against Contingent Fees	8
Freeze Exemption	8
Conflict of Interest	8
Documents, Publications and Written Reports	9
Intellectual Property	10
Recognized Protectable Rights and Interest	10-12
Retained Rights / License Rights	12-13
Copyright	13
Patent Rights	14
Third-Party Intellectual Property	14
Warranties	14-16
Intellectual Property Indemnity	16-17
Federal Funding	17
Survival	18
Americans with Disability Act Communication Policy	18
Non-Discrimination Clause	18-19
Office of Civil Rights	19-22
Federal Equal Opportunity Requirements	22-24
Child Support Compliance Act	25
Air or Water Pollution Requirements	25
Drug Free Workplace	26
Smoke-free Workplace Certification	27
Debarment and Suspension Certification	27-29
Sexual Harassment Policy	29-30

MISCELLANEOUS ADMINISTRATIVE POLICIES

MISCELLANEOUS AGREEMENT

- All MCAH Agreements and Budgets are subject to restrictions, limitations, or conditions enacted by the Congress and/or state Legislature or any statute enacted by the Congress and/or state Legislature or any court action which may affect the provisions, terms, or funding of an MCAH Agreement and Budget in any manner.

- If the MCAH Agreement and Budget is deemed to be invalid, the MCAH Branch will have no liability to pay any funds whatsoever to the Agency or to furnish any other considerations under this MCAH Agreement and Budget. Therefore, the Agency will not be obligated to perform any provisions of this MCAH Agreement and Budget.
-
- Agencies that enter into agreement with the Department of Health Services to provide MCAH services, and accept MCAH funding, are legally required to provide the full level of services outlined in the program Scope Of Work (SOW) regardless of the proportion of funding provided by the MCAH Branch.

- The MCAH Branch has the option of voiding or revising the MCAH Agreement and Budget to reflect any reduction of funds with 30-days written notice.

APPROVAL

- This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained. (Source – GTC 103)

AMENDMENT

- No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties. (Source – GTC 103)

MISCELLANEOUS ADMINISTRATIVE POLICIES

ASSIGNMENT

- This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment. (Source – GTC 103)

DISPUTES

- Contractor shall continue with the responsibilities under this Agreement during any dispute. (Source – GTC 103)

TERMINATION FOR CAUSE

- The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand. (Source – GTC 103)

INDEMNIFICATION

- Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement. (Source – GTC 103)

MISCELLANEOUS ADMINISTRATIVE POLICIES

CONFIDENTIALITY OF INFORMATION

- 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, his/her employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.

- The Contractor and its employees, agents, or subcontractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.

- The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.

- 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 DHS without prior written authorization from the DHS program contract manager.

- 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. (Source - Exhibit D (S))

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 DHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHS under this agreement. (Source - Exhibit D (F))

MISCELLANEOUS ADMINISTRATIVE POLICIES

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

- 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.

- 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.
-
- Contractor agrees that DHS, 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).
-
- 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.

RECORD RETENTION (Applicable to agreements in excess of $10,000.) (Continued)

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. If agreement between Contractor and Subcontractor (if applicable) is completely terminated, the records relating to the agreement must be returned to the primary Contractor upon termination of the agreement and the Contractor will then preserve and make available for the above mentioned period.

(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.

- 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.

- 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. (Source – Exhibit D(F))

MISCELLANEOUS ADMINISTRATIVE POLICIES

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. (Source – Exhibit D (F))

FEDERAL CONTRACT FUNDS

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

- 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 the determination was made.

- 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 Congress or any statute enacted by Congress, which may affect the provisions, terms or funding of this agreement in any manner.

- It is mutually agreed that if Congress does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.

DHS has the option to void or cancel the agreement with:

- 30-days advance written notice or to amend the agreement to reflect any reduction in funds. (Source – Exhibit D (F))

MISCELLANEOUS ADMINISTRATIVE POLICIES

COVENANT AGAINST CONTINGENT FEES

- 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, DHS 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. (Source - Exhibit D(F))

FREEZE EXEMPTION

(Available only to local government agencies.)

- Contractor agrees that any hiring freeze adopted during the term of this contract shall not be applied to the positions funded, in whole or part, by this contract.

- Contractor agrees not to implement any personnel policy, which may adversely affect performance or the positions funded, in whole or part, by this contract.

- Contractor agrees that any travel freeze or travel limitation policy adopted during the term of this contract shall not restrict travel funded, in whole or part, by this contract.

- Contractor agrees that any purchasing freeze or purchase limitation policy adopted during the term of this contract shall not restrict or limit purchases funded, in whole or part, by this contract. (Source – Exhibit E)

CONFLICT OF INTEREST

- The Contractor agrees that all reasonable efforts will be made to ensure that no conflict of interest exists between its officers, agents, employees, consultants or members of its governing body.

CONFLICT OF INTEREST (Continued)

- The Contractor shall prevent its officers, agents, employees, consultants or members of its governing body from using 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.

- In the event that DHS determines that a conflict of interest situation exists, any cost associated with the conflict may constitute grounds for termination of this agreement. This provision shall not be construed to prohibit the employment of persons with whom the Contractor's officers, agents, or employees have family, business or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant and such persons have successfully competed for employment with other applicants on a merit basis. (Source – Exhibit E)

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, publications or written report (excluding progress reports, financial reports and normal contract 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 and subcontracts relating to the preparation of such document or report, if the total cost for work by non-employees of the State exceeds $5,000. (Source - Exhibit D (S))

MISCELLANEOUS ADMINISTRATIVE POLICIES

INTELLECTUAL PROPERTY

Ownership

- Except where DHS has agreed in a signed writing to accept a license, DHS 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/Subcontractor or DHS and which result directly or indirectly from this agreement.

RECOGNIZED PROTECTABLE RIGHTS AND INTEREST

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.

- "Works", such as:

  - 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.

RECOGNIZED PROTECTABLE RIGHTS AND INTEREST (Continued)

- 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 for peer review or reference journals or independent research projects.

- 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 DHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of DHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHS. **Except as otherwise set forth herein, neither the Contractor nor DHS 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 DHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHS in a third-party's license agreement.

- Contractor agrees to cooperate with DHS in establishing or maintaining DHS' exclusive rights in the Intellectual Property, and in assuring DHS' 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 DHS all rights, title and interest in Intellectual Property made, conceived, derived from or reduced to practice by the subcontractor, Contractor or DHS and which result directly or indirectly from this agreement or any subcontract.

RECOGNIZED PROTECTABLE RIGHTS AND INTEREST (Continued)

- If Contractor provides subcontractor with Intellectual property owned by DHS for purposes of performing the activities agreed upon in the Scope of Work, Contractor agrees if at such time the agreement between the Contractor and the Subcontractor terminates, Subcontractor must return all Intellectual property, materials, client records and any other property used to complete primary Contractors Scope of Work with DHS must be returned to Contractor at the time of termination.

- Contractor further agrees to assist and cooperate with DHS 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 DHS' Intellectual Property rights and interests.

RETAINED RIGHTS/ LICENSE RIGHTS

- Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS 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 DHS, 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.

**RETAINED RIGHTS/
LICENSE RIGHTS
(Continued)**

- 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 DHS 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.

COPYRIGHT

- Contractor agrees that for purposes of copyright law, all works [as defined in "Works" subparagraph 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 DHS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement.

- 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 DHS and which result directly or indirectly from this agreement, shall include DHS' notice of copyright, which shall read in 3mm or larger typeface: "© 2001, State of California, Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the Department of Health Services." 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.

MISCELLANEOUS ADMINISTRATIVE POLICIES

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 DHS 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 agreements' scope of work, then Contractor agrees to assign to DHS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHS in securing United States and foreign patents with respect thereto.

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 DHS' prior written approval; and (ii) granting to or obtaining for DHS, without additional compensation, a license, as described under "Warranties" (sub-paragraph 2, pg. 15), 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 these terms is unattainable, and DHS 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 DHS.

WARRANTIES

- Contractor represents and warrants that:
  - It is free to enter into and fully perform this agreement.
  - It has secured and will secure all rights and licenses necessary for its performance of this agreement.

WARRANTIES
(Continued)

- 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 DHS 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.

  - 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.

  - 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.

  - 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 DHS in this agreement.

  - 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.

  - 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.

WARRANTIES (Continued)

NOTE: DHS 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.

INTELLECTUAL PROPERTY INDEMNITY

- Contractor shall indemnify, defend and hold harmless DHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnities") 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 Indemnities 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 DHS' 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 DHS 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. DHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHS.

INTELLECTUAL PROPERTY INDEMNITY (Continued)

- Should any Intellectual Property licensed by the Contractor to DHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to DHS.

- DHS 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 DHS 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 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.

- Contractor agrees that damages alone would be inadequate to compensate DHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHS would suffer irreparable harm in the event of such breach and agrees DHS 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.

FEDERAL FUNDING

- In any agreement funded in whole or in part by the federal government, DHS 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 government purposes and to have and permit others to do so.

MISCELLANEOUS ADMINISTRATIVE POLICIES

SURVIVAL

- The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule. (Source - Exhibit D(S))

AMERICANS WITH DISABILITY ACT COMMUNICATION

- It is the policy of the CDHS to fully comply with the accommodation requirements of the ADA, the Rehabilitation Act of 1973, the California FEHA, and other state and federal laws.

- The purpose of the ADA Communication Policy is to ensure individuals with disabilities have admission and access to the operation of our programs, services, or activities. Upon request, individuals shall be provided an alternative format for brochures, meetings, hearings, pamphlets and newsletters, as well as assistive services needed in order to participate in any CDHS program, service, or activity. This is required to provide equal access to communications from the CDHS for both employees and the public. (Source – HAM)

NON-DISCRIMINATION CLAUSE

- During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

- Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment

- Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated hereunder (California Code of Regulations, Title 2, Section 7285 et seq.).

MISCELLANEOUS ADMINISTRATIVE POLICIES

NON-DISCRIMINATION CLAUSE (Continued)

- The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

- Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. (Source – GTC 103)

THE OFFICE OF CIVIL RIGHTS (OCR)

- The Office of Civil Rights (OCR) administers the California Department of Health Services (CDHS/Department) internal Equal Employment Opportunity (EEO) and nondiscrimination program and the CDHS external Civil Rights Compliance Program.

- The purpose of this office is to promote the full realization of equal employment opportunity for CDHS applicants and employees and equal access to health services for contractors and beneficiaries of services.

OCR

Equal Employment Opportunity Program

- The OCR provides guidance, programs and monitoring systems in ensuring that management, at all levels, achieve the Department's equal employment opportunity objectives in all areas of employment (including, but not limited to, recruitment, hiring, selection, classification, promotion, training, job assignment, transfer, corrective action and retention).

OCR

Equal Employment Opportunity Program (Continued)

- The OCR ensures that no employee, applicant or anyone doing business with CDHS is discriminated on the basis of race, color, national origin, age, sex, disability, ancestry, marital status, political affiliation, sexual orientation, medical condition, or suffers retaliation for engaging in a protected activity to provide equal opportunity in employment and the delivery of health services.

OCR

Compliance Program

- The OCR is required to review health care facilities for compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Title 22 of the California Code of Regulations and other applicable state and federal laws and regulations.

- The OCR has been assigned the responsibility of ensuring that actions will be taken by all levels of management to achieve the Department's equal employment opportunities objectives and that health providers receiving federal and state financial assistance through the Department do not discriminate in the provision of services delineated under both federal and state civil rights laws.

The OCR provides:

- A uniform body of laws, rules, policies and procedures about equal employment opportunity, resources and the implementation of programs.

- Technical advice and assistance to all levels of management about their roles and responsibilities in carrying out the Department's EEO obligations.

- Internal and external communications, with CDHS employees, health providers, and regulatory agencies in the enforcement of federal and state laws and the Department's EEO nondiscrimination policies and procedures.

OCR

Compliance Program (Continued)

- A workforce analysis at least annually to determine which classifications, if any; show a statistically significant under representation, identify hidden barriers, policies and processes that may be the cause for the under representation.

- Investigation, mediation, and resolution of complaints of discrimination filed by CDHS applicants and employees and beneficiaries of services and recipient of federal and state funds through CDHS.

- Promotion and arrangement of sensitivity and awareness training on various topics include, one or more of the following;
  - Equal employment opportunity
  - Disability awareness
  - ADA Compliance
  - Reasonable Accommodation
  - Sexual Harassment Prevention
  - Recent laws and court cases
  - Discrimination compliance process
  - Ensures compliance with the ADA with regards to facility and programmatic access within CDHS and with healthcare providers

- Yearly compliance reviews of a sampling of health facilities to ensure compliance with various civil right laws.

- A review and determination of all formal reasonable accommodation requests made by CDHS employees.

- Communication with advocate organizations in promoting the Department's policy of equal employment opportunity, cultural diversity, and equal access to services.

- Direction, guidance, and staff support to the Department's Disability Advisory Committee (DAC) and EEO Committee.

- An EEO plan of action to achieve the goals and objectives of the Department's Strategic Plan.

OCR

Compliance Program (Continued)

- Yearly development of equal employment opportunity, disability, and upward mobility goals and timetables.

FEDERAL EQUAL OPPORTUNITY REQUIREMENTS (Applicable to all federally funded agreements.)

- 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 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 DHS, 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).

FEDERAL EQUAL OPPORTUNITY REQUIREMENTS (Applicable to all federally funded agreements.) (Continued)

- 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.

- The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all 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.

- 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.

- 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, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, 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.

FEDERAL EQUAL OPPORTUNITY REQUIREMENTS (Applicable to all federally funded agreements.) (Continued)

- 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, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 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, 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 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 DHS 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 DHS, the Contractor may request in writing to DHS, 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. (Source – Exhibit D(F))

MISCELLANEOUS ADMINISTRATIVE POLICIES

CHILD SUPPORT COMPLIANCE ACT

NOTE: "For any Agreement in excess of $100,000, the contractor acknowledges in accordance with, that:

- The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

- The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department." (Source – GTC 103)

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.)

- 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).

- 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. (Source – Exhibit D(F))

MISCELLANEOUS ADMINISTRATIVE POLICIES

DRUG FREE WORKPLACE

- Agency must provide a drug-free workplace by doing all of the following:

  - publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

  - Establishing a drug-free awareness program to inform employees about all of the following:
    - the dangers of drug abuse in the workplace
    - the person's or organization's policy of maintaining a drug-free workplace.
    - Any available drug counseling, rehabilitation, and employee assistance programs.
    - The penalties that may be imposed upon employees for drug abuse violations.

  - Requiring that each employee engaged in the performance of the MCH Allocation Plan and Budget or grant be given a copy of the statement required by the first bulleted item of this provision and that, as a condition of employment on the contract, grant, or any other agreement, the employee agrees to abide by the terms of the statement.

  - Agreeing that this MCH Allocation Plan and Budget is subject to suspension of payments or termination, or both, and the Agency may be subject to debarment, in accordance with the requirements of the Government Code Section 8350, et seq., if the Department determines that any of the following has occurred:

    - the Agency or grantee has made a false certification.
    - the Agency violates the certification by failing to carry out the requirements of the above bulleted provisions of this clause.

MISCELLANEOUS ADMINISTRATIVE POLICIES

SMOKE-FREE WORKPLACE CERTIFICATION

NOTE: Applicable to federally funded agreements/grants and subcontracts/sub-awards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.

- Public Law 103-227, also know 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 provisions 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.

- 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.

- 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.

- Contractor or Grantee further agrees that it will insert this certification into any sub awards (subcontracts or sub grants) entered into that provide for children's services as described in he Act. (Source – Exhibit D(F))

MISCELLANEOUS ADMINISTRATIVE POLICIES

DEBARMENT AND SUSPENSION CERTIFICATION

NOTE: Applicable to all agreements funded in part or whole with federal funds.

- 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).

- By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

  - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

  - 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;

  - 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 preceding paragraph; and

  - 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.

DEBARMENT AND SUSPENSION CERTIFICATION (Continued)

- 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.

- 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.

- If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHS program funding this contract.

- The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

- If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHS may terminate this agreement for cause or default. (Source – Exhibit D(F))

SEXUAL HARASSMENT POLICY

- It is the policy of the Department that all employees have a right to work in an environment free from all forms of discrimination, including sexual harassment, intimidation, or coercion. State and federal laws and guidelines of the U.S. EEOC and the DFEH also specifically prohibit Sexual Harassment.

SEXUAL HARASSMENT POLICY (Continued)

- Sexual harassment is unacceptable, illegal, and will not be tolerated. All employees are responsible for helping to ensure that sexual harassment does not occur by conducting themselves in an appropriate manner and by reporting harassment they observe. Disciplinary action, up to and including dismissal, will be taken against those individuals determined to be in violation of this policy.

- Sexual harassment is generally defined as unsolicited and unwelcome sexual advances of a severe or pervasive nature, whether they are written, verbal, physical, or visual. The offense usually occurs when:

- Submission to that conduct or communication is made either explicitly or implicitly a term or condition of employment;

- Submission to or rejection of that conduct or communication by an employee is used as a basis for employment decision affecting the employee;

- Such conduct or communication has the purpose, effect or potential to affect an employee's performance negatively or create an intimidating, hostile, or otherwise offensive work environment.

- Whether or not conduct constitutes sexual harassment may depend on how that conduct is viewed by the employee who is subjected to that conduct and by other reasonable persons. Any employee who initiates or persists in the conduct that is viewed by another as being of a sexual nature assumes the risk of liability and the possible penalties for conduct which has the effect of sexual harassment regardless of the employee's intent. (Source - HAM)