



To: Commissioners, First 5 Ventura County

From: Jennifer Johnson, Director of Finance & Administration (on behalf of the Administration/Finance Committee)

Date: May 20, 2021

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.

The Commission's contracting practice for multi-year contracting with service provisions and budgets for the full funding cycle is maintained in the proposed boilerplate. Funded partners 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 contract would be issued for one year with annual amendments to add additional fiscal years as needed.

Currently, funded partners are allowed to utilize unspent funds for use by the end of the funding cycle. The proposed boilerplate would continue to consider the use of unspent funds that result after the end of FY 2021-22 for use by June 30, 2023, 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, as attached. Highlights of the revisions to the boilerplate include:

- Refines provision on independent contractor status.
- Expands provision for minimum standards related to wages and benefits and clarifies allowable/reimbursable costs for unemployment insurance.



BOILERPLATE CHANGES

The following provisions are under consideration for modification. New language is reflected in underlined font. Omitted language is reflected in strikethrough font. Paragraphs that have been moved are in double underline/strikethrough.

- 2.1 INDEPENDENT CONTRACTOR.** For all purposes arising out of this Agreement, it is understood and agreed that CONTRACTOR is at all times an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR and CONTRACTOR's employees will not be entitled to any benefits payable to employees of COMMISSION, including but not limited to overtime, retirement benefits, workers' compensation benefits, unemployment benefits, injury leave or other leave benefits. COMMISSION is not required to make any tax or benefit deductions from the compensation payable to CONTRACTOR under the provisions of this Agreement. As an independent contractor, CONTRACTOR hereby holds COMMISSION harmless from any and all claims that may be made against COMMISSION based upon any contention by any third party that an employer-employee relationship exists by reason of the Agreement. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons will be entirely and exclusively under the direction, supervision and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law will be determined by CONTRACTOR. COMMISSION will have no right or authority over such persons or the terms of such employment, except as provided in this Agreement.
- 4.8 WAGE & BENEFIT MINIMUM STANDARDS.** CONTRACTOR shall maintain the following minimum standards with ~~regard to~~ salaries and benefits for all of CONTRACTOR'S employees:
- ~~4.8.1~~ 4.8.2 All wages and benefits, shall be no less than the minimum, required by applicable state and federal law; ~~and~~
- ~~4.8.2~~ 4.8.2 All employees shall receive basic statutory coverage of FICA, Workers' Compensation, Unemployment Insurance Benefits and Disability Insurance Benefits; ~~and~~
- ~~4.8.2~~ 4.8.2 All wages and benefits, shall be no less than the minimum, required by applicable state and federal law.
- 4.8.3 CONTRACTOR shall budget salaries/wages and benefits accordingly in Exhibit C. For unemployment insurance benefits, allowable costs under the budget, Exhibit C, may include the State of California Unemployment Insurance (SUI) program or similar program. The COMMISSION shall not reimburse for any unemployment costs or claims made on an actual-cost-basis if CONTRACTOR opts out of the SUI program.