



To: Commissioners, First 5 Ventura County

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

Date: April 21, 2022

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 when the funding authority is for multiple years and there are no other precluding factors (e.g., unknown leveraged funding). In this case, funded partners have the ability to amend budgets and service provisions if 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:

- Clarifying contractors who need to submit information on how religious activities will be prohibited.
- Refining audit availability/submission requirement.
- Updating attribution language and logo requirements in alignment with new policy proposed April 2022.
- Clarifying requirement for working capital is related to the payment method (e.g., quarterly reimbursement or advance payment).
- Refining provision on inventory to describe essential elements.
- Eliminating separate provision on Reimbursement by moving to relevant sections on Payment and Matching Funds.
- Providing additional detail on how advance payments are reconciled on Exhibit D.



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.

- 2.12 RELIGIOUS ACTIVITIES PROHIBITED.** There shall be no religious worship, instructions or proselytization as part of, or in connection with the performance of this Agreement. Active participation in religious worship or instruction cannot be a prerequisite for individuals receiving services utilizing Proposition 10 dollars. Expenditures of Proposition 10 dollars for religious services and practices are specifically prohibited. CONTRACTORS who are religious organizations exempt from taxation by the Internal Revenue Service must indicate how unlawful expenditures of Proposition 10 dollars for religious services and practices are to be avoided. Any religious indoctrination or encouragement incidental to the delivery of services under the application is strictly prohibited.
- 2.19 AUDIT REQUIREMENTS.**
- 2.19.1 The Single Audit Act requires sub-recipients (CONTRACTOR) receiving federal funds in a fiscal year, at or above the threshold established by the Federal government, to obtain an audit performed in accordance with the United States Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. At a minimum, reports shall:
- 2.19.1.1 Indicate that the audit was performed in accordance with generally accepted government audit standards.
- 2.19.1.2 Indicate whether the service provision was operated in compliance with the terms of federal grants, contain a statement on internal controls, and specify the amount of funds received from COMMISSION.
- 2.19.2 CONTRACTOR shall submit~~make available~~ to COMMISSION copies of audit(s) and management letter(s) completed in relation to any funds provided under this Agreement in accordance with this paragraph 2.19~~within thirty (30) days of receipt by CONTRACTOR.~~
- 2.24 ATTRIBUTION.** CONTRACTOR agrees to use attribution language and the First 5 Ventura County logo ("Logo"), provided by COMMISSION, for all ~~printed~~published material specific to the Program funded by COMMISSION under this Agreement. Materials shall include, but not be limited to websites; brochures; flyers; handbooks; television, radio, print ads, social media, and public service announcements; and presentations. Attribution language can be either "Funded by" or "Supported through a grant from" First 5 Ventura County. The Logo may be used in lieu of "First 5 Ventura County". If the CONTRACTOR performs a Program that is identified in the COMMISSION's Strategic Plan then they are required to use the Logo adapted for their Program. If ~~there is~~CONTRACTOR also uses a separate logo for the Program, the Logo placed shall be placed on the same page as the ~~Program~~CONTRACTOR's logo. When a majority of the Program funding is from the COMMISSION, the Logo size shall be larger or equal to that of the ~~Program~~CONTRACTOR's logo. When less than a majority of the Program funding is from the COMMISSION, the Logo shall not be less than 50% of the ~~Program~~CONTRACTOR's logo. ~~The Logo and attribution language can be used in combination. Attribution language may include, "Funded by:" placed over the logo, or "Supported through a grant from:" placed over the logo. For COMMISSION's Neighborhoods for Learning initiative, "First 5" shall precede the name of the Neighborhood for Learning. CONTRACTOR shall refer to the program as the "First 5 Neighborhoods for Learning" in all verbal communications and materials as defined in Section 2.24 herein.~~

4.1 PAYMENT

4.1.1 PAYMENT METHOD. CONTRACTOR shall be paid in accordance with the payment method as outlined in Exhibit D, for services rendered, provided that CONTRACTOR is not in default under any provisions of this Agreement. Services shall be compared against the terms outlined in Section 3. Program services are to be provided throughout the full term of this Agreement. COMMISSION shall reimburse CONTRACTOR within thirty (30) working days after the receipt of a complete and accurate invoice. However, payment by COMMISSION in greater than 30 days, but less than 60 days after the date of COMMISSION's receipt of CONTRACTOR's invoice, shall not be considered a substantial breach of this Agreement nor cause for termination of this Agreement.

4.1.2 CONTRACTOR shall not claim reimbursement from COMMISSION, or apply sums received from COMMISSION, with respect to that portion of its obligations, which have been paid by another source of revenue.

4.6 WORKING CAPITAL. CONTRACTOR must provide for sufficient working capital to meet the fiscal demands of this Agreement, based on the payment method outlined in Exhibit D.

~~**4.11 REIMBURSEMENT.** CONTRACTOR shall not claim reimbursement from COMMISSION, or apply sums received from COMMISSION, with respect to that portion of its obligations, which have been paid by another source of revenue. CONTRACTOR agrees that it shall not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining (1) state funds under any state program, or (2) COMMISSION funds under any COMMISSION program, without prior written approval of COMMISSION.~~

4.13 MATCHING FUNDS. CONTRACTOR shall provide matching funds in accordance with the minimum percent outlined in Exhibit C for each corresponding funding period of payments made to CONTRACTOR by COMMISSION. "Matching funds" are defined as the resources (cash or in-kind) provided by CONTRACTOR used to accomplish a proposed scope of work. Matching funds shall be verifiable from the Contractor's records. Actual amounts shall be reported on the invoice. If at the end of the contract period, the project is unable to/did not meet the minimum match requirement, the Commission reserves the right to reduce and/or recover the proportional amount of funds provided to the project. CONTRACTOR agrees that it shall not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining COMMISSION funds under any COMMISSION program, without prior written approval of COMMISSION.

4.15 INVENTORY. CONTRACTOR shall maintain an inventory (including, but not limited to, item description and quantity, cost, date purchased, condition, and location) of any equipment or furniture purchased in whole or in part with funds provided under this Agreement. Upon request, CONTRACTOR shall make these records available within Ventura County to all authorized COMMISSION, state (including Auditor General) and federal personnel.

Note: The current Section 2.32 Monitoring and Evaluation will be moved and renumbered to 2.20 to precede Sections for Progress Reports (becomes 2.21) and Evaluation (becomes 2.22) in new boilerplate contracts that are issued.

Revisions to Exhibit D – see attached.

**CONTRACTOR
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 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.

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 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.

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. Actual expenditures will be reviewed quarterly and reconciled against advanced payments made for the same period. If the spending level does not justify additional advanced funds, Commission may reduce or suspend payments until the spending level supports release of additional funds. The final last monthly 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 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 with adequate supporting documentation 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.