

STATE OF CALIFORNIA  
DEPARTMENT OF FOOD AND AGRICULTURE  
MARKETING BRANCH



CONTRACTS AND ACQUISITIONS  
POLICY FOR MARKETING PROGRAMS

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# CONTRACTS AND ACQUISITIONS

## 100 *INTRODUCTION*

Each marketing board, council and commission is responsible for its own product and services acquisitions. This process includes ensuring the necessity for procuring the product or service, ensuring appropriate funding is available, complying with laws and writing contracts in a manner that safeguards the interests of the program and of the State.

In accordance with the Department's Accounting Guidelines and General Rules and Manual for Performing Agreed Upon Procedures, programs are required to have internal controls and policies specific to contracting and purchasing. Policy regarding contracts must be board-approved and designed to ensure program funds are used wisely and that where needed, equal access to a competitive selection process is provided to qualified potential contractors.

## 101 *CONTRACTING AND ACQUISITIONS FOR \$10,000 AND ABOVE*

For all contracts and acquisitions in the amount of \$10,000 and above, a detailed scope of work and an analysis that includes some combination of professional assessment (e.g., quality, expertise, availability) reviews and/or references, and cost or proposed budget should be undertaken. Bidding may be a viable option in some cases and should be open and fair to potential qualified bidders. Additionally, the board or an authorized committee may be tasked with reviewing and selecting potential contractors as part of the contracting process.

The bidding and contracting process serves dual purposes:

- Provides organized, detailed information for determining scope and for analysis during the decision-making process
- Provides prospective bidders with an objective and comprehensible process that encourages competition on an equal basis

The contracting and acquisitions process must be fair and reasonable and properly documented. Documentation should include at a minimum:

- Goods or services being acquired
- Amount
- Information on entities contacted, if applicable
- Information on bids received, if applicable
- Copy of contract or agreement, if applicable
- Documentation of action by an authorized committee or the board, such as official meeting minutes, if applicable

## 102 CLASSIFICATION OF CONTRACTS

Proper classification of contracts is useful as a first step in determining the most appropriate bid process to use, and what elements are required to be in a contract. Consider the following concepts for each acquisition:

- *Is the acquisition for the purchase of a commodity or goods?* Does the contract have as its sole or main purpose the buying of some tangible item(s), such as equipment, parts, supplies, or other merchandise? If so, further consideration should be given to determine whether any services are being provided as well, and which has the predominant value to the contract (i.e., the items being purchased, or the services being rendered). The dollar value associated with the services provided, or the value of the goods being supplied, is the primary factor that should be considered.
- *Is the acquisition for providing services?* Services contracts are those that have someone doing something. A contract may be for the procurement of a product and its installation. The determining factor should be what is the primary focus of the contract and expertise of the contractor. Is it the purchase of the item, or proper installation?
- *Is it a consulting services contract?* Does the contract have as its sole or primary purpose some type of analysis, survey, or recommendation in mind? Is the unique knowledge and analytical abilities of an individual/firm of critical importance to the success of the contract?

## 103 BASIC CONTRACTING AND ACQUISITIONS PROCESS

### 103.1 Preliminary Considerations

The contracting process starts with the recognition of a need for a service, while the acquisitions process begins with identifying the need for a product. From that point the process varies depending on the type of product or services needed. Key considerations include:

- *Time* – When the product or service is needed is a critical factor.
- *Funding* – Funding and payment for services rendered is important. The program should have funding available within its budget for the fiscal year in which the services will be performed. If a multi-year contract, the necessary contingencies should be incorporated into the terms of the contract.
- *Competitive Bidding* – When competitive bidding is used, selection of a contractor should be the result of an open and fair process in which qualified providers of the product or service desired have the opportunity, and the information necessary to submit a bid or proposal.

- *Management of the Contract* – The final step of managing the contract should be anticipated and planned during the contracting process. Deliverables should be clearly described in the scope of work so that they can be evaluated and payments can be approved. Additionally, the contract should clearly define the roles and responsibilities of all parties and who will be performing each task or activity.

### 103.2 *Elements of a Valid Contract and Contract Templates*

Each contract should contain the following information:

- *Identification and responsibilities* of the parties.
- *Term* for the performance or completion of the contract (dates or length of time).
- *Consideration*: The contract should clearly express the maximum amount to be paid and the basis on which payment is to be made: e.g., a fixed amount, billing based on actual time spent at a specified rate including actual expenses, or cost recovery.
- *Scope of Work*: A description of the work, service, or product to be performed, rendered, or provided. Clear and concise language should be used in the scope. The scope of work should contain any milestones, reports, deliverables, and end products that are expected to be provided.
- *Terms and Conditions* (see Attachment #2) and any unique provisions of the agreement.
- *Signatory*: An individual or organization representative for each party who is authorized to sign and bind that party.

A standard contract template is provided as Attachment #1.

Additionally, the Department and the University of California (UC) have developed a grant agreement template to be used when funding research conducted by the UC. Please contact the Marketing Branch to request a copy of this template.

### 103.3 *Disputes/Default Clause*

Contracts must include a process by which contract disputes shall be addressed. Suggested language is shown below:

“Contractor must continue with the responsibilities under the contract during any dispute, except in the event the dispute stems from contractor’s substantial breach to make timely payment to contractor. In the event of a dispute, a “notice of dispute” must be filed by the disputing party within thirty (30) calendar days of the discovery of the problem. Within thirty (30) days of receipt of the notice of

dispute, the party receiving the notice will meet with the disputing party for the purpose of resolving the dispute. If parties cannot agree upon a resolution to the dispute, both parties retain the right to bring a lawsuit or seek any other legal or equitable remedy either may have.

## 104 OVERVIEW OF THE CONTRACTING PROCESS

The text box below and table on the following page give a general checklist and overview of the contracting process. The process will vary greatly depending on the circumstances of the specific contract. The table is designed to assist in preparation of a contract.

### Contract Guidelines Checklist

√ ***Contract makes good business sense and the cost is reasonable***

***Good business sense:*** *Drafted to obtain desired results, is the scope of work specific and realistic, does the contract ensure the most effective use of funds, are deliverables clear and concise with a realistic timetable?*

***Reasonable cost:*** *Are bids received within the estimate range, do bids cover a wide range, is the low bid very low, are all bids high?*

√ ***Clear and concise language consistent with the terms of solicitation and bid***

***Term:*** *Within fiscal year (for multiple years, contingency language included as appropriate)*

***Scope of Work:*** *Specifications and requirements, necessary personnel and staffing, coordination, results and deliverables, timeliness and progress reports, evaluation and acceptance*

***Total amount and payment method***

***Terms and conditions:*** *Both standard terms and conditions, such as mutual indemnification and non-discrimination clause (see attachment #2), and any additional provisions which are unique to the contract*

## THE CONTRACTING PROCESS – STEPS TO CONSIDER

Step	Important Factors	Decisions to Be Made
<p><b>ONE</b></p> <p>Someone within the program identifies the need for a service, whether the need is for a routine renewal of an existing service or the acquisition of a new or unique service.</p>	<ul style="list-style-type: none"> <li>• What is the nature of the service?</li> <li>• What type of service is needed?</li> <li>• How necessary is the service?</li> <li>• When is the service needed?</li> <li>• Is this an ongoing or one-time service?</li> <li>• Is service routine or unique?</li> </ul>	<ul style="list-style-type: none"> <li>• What internal policies and procedures apply to requesting services?</li> <li>• What are the possible or probable sources for the services?</li> <li>• What justifications need to be developed?</li> <li>• Who has the authority to approve the request?</li> </ul>
<p><b>TWO</b></p> <p>Programs must take into consideration the products or services needed, the most appropriate means for gathering bids or proposals and making a final selection.</p>	<ul style="list-style-type: none"> <li>• What is the estimated cost?</li> <li>• Are the sources for the service limited?</li> <li>• Is a contracted source already available?</li> <li>• Can an existing contract be amended?</li> </ul>	<ul style="list-style-type: none"> <li>• Select by open process, such as:               <ul style="list-style-type: none"> <li>○ Invitation for Bids (IFB)?</li> <li>○ Request for Proposals (RFP)?</li> <li>○ Request for Qualifications?</li> </ul> </li> <li>• Select by informal competition such as telephone bids and quotes?</li> <li>• Consider only one provider?</li> </ul>
<p><b>If Formal Bid Process is Used</b></p>		
<p><b>THREE</b></p> <p>The formal competitive bidding process involves numerous factors and decisions.</p>	<ul style="list-style-type: none"> <li>• The contracting opportunity should be made available to a predetermined set of vendors (entities that have needed expertise) and/or publicized.</li> <li>• A solicitation package containing all specifications should be developed and should be available to all competitors.</li> <li>• Competition should not be unnecessarily restricted.</li> <li>• Procedures should be followed to ensure open and fair competition.</li> <li>• All participants should be notified of their status.</li> <li>• The contract should be written in accord with the specifications in the solicitation package and contractor's response to the solicitation.</li> </ul>	<ul style="list-style-type: none"> <li>• Who develops the technical specifications describing the services to be performed?</li> <li>• Who ensures that the technical specifications are necessary, will achieve the desired results, and do not unnecessarily restrict competition?</li> <li>• Who develops and reviews the specifications describing general contract requirements and the solicitation requirements?</li> <li>• Who conducts solicitation activities?</li> <li>• Who writes and processes the contract?</li> </ul>
<p><b>FOUR</b></p> <p>Provisions regarding management of the contract should be built into the contract to facilitate measurement of achievement and measurement of contractor performance.</p>	<p><i>Management includes:</i></p> <ul style="list-style-type: none"> <li>• Identifying the deliverables and ensuring satisfactory delivery.</li> <li>• Monitoring progress, especially for quality and performance deadlines.</li> <li>• Providing for audit, especially for critical compliance issues.</li> <li>• Reviewing and approving invoices for contract compliance, accuracy and prompt payment.</li> <li>• Identifying contract and contractor problems.</li> </ul>	<ul style="list-style-type: none"> <li>• Did the contractor satisfactorily perform all required services?</li> <li>• Should the contractor be paid or should the invoice be disputed?</li> <li>• Is a formal evaluation required or needed?</li> <li>• Should the services be stopped or continued?</li> <li>• Should the contract be renewed or rebid?</li> <li>• How can the contract or contracted services be improved?</li> </ul>

*105.1 Invitation for Bids*

An Invitation for Bid (IFB) should be exact and clear to ensure that all bids received will be competitive as the result of all bidders bidding on exactly the same work or equipment, specifications, and contract obligations.

An IFB seeks an answer to the following:

“Here is exactly what we need to acquire. Here are the qualification requirements, performance specifications, and time frames that should be met. How much will you charge?”

An IFB should indicate the specific requirements of the program. Timely submitted bids are reviewed to determine which bidders meet the requirements indicated in the IFB.

*105.2 Request for Proposals*

A Request for Proposals (RFP) should be as precise as possible to ensure that all proposals accomplish the same goal.

An RFP seeks an answer to the following:

“Here is what we wish to accomplish. Here are the qualification requirements, performance specifications (scope of work), time frames, and other requirements that should be met. How would you accomplish the job for us and what is your detailed budget for completing the scope of work?”

*105.3 What to Include in an RFP*

A marketing program should communicate its specific needs, requirements, goals, and objectives in the RFP in a precise manner to ensure that all proposals are accomplishing the same goal. Additionally, an objective evaluation procedure must be used to determine which proposers have complied with the RFP requirements and to whom the contract should be awarded. RFPs should include:

1. A scope of work that contains:
  - a. The issue, problem or need to address, detailing the task/activities to be performed, who they will be performed by, techniques or approaches, time frame, and proposed cost.
  - b. Qualification requirements and an explanation in realistic terms of what the proposer is expected to accomplish including any desired approach to the problem and the specific functions, tasks, or



activities that should be performed, in their order of importance and probable sequence.

- c. Practical and policy information, technological requirements or specifications, and legal limitations, if any.
  - d. Specific questions to be answered or issues to be addressed.
  - e. Performance timelines or completion dates.
  - f. A description of the items, products, or results to be delivered.
  - g. The format of the completed progress reports and final report, if applicable.
  - h. The extent and nature of the assistance and cooperation from the marketing program that will be available to the proposer.
2. Proposal instructions should contain a description of the format that proposals should follow and the elements they should contain. RFPs should provide:
- a. Specifications and information on how the program will select the winning proposal (e.g., criteria, evaluation process).
  - b. Time schedules, including:
    - i. Date on which the proposals should be submitted.
    - ii. Timetable the program will follow in evaluating proposals.
    - iii. Date of award.
    - iv. Anticipated contract term, including commencement and completion dates.
3. Notice of payment terms or restrictions, including:
- a. Whether and to what extent progress payments will be allowed.
  - b. Whether payments are subject to payment methods.
  - c. Penalties for late payments.
  - d. Known/estimated budgetary limitations on the contract price, if applicable.
4. Appeal process and grounds for disqualification of proposers.

105.4 *Guidelines for Criteria and Considerations in Evaluating RFPs*

The following are suggested criteria that may be used in evaluating proposals:

1. Does the proposing firm understand the program's problem or needs?
2. Can the proposer fit this work into its existing obligations?
3. Is the approach to the problem and corresponding procedures reasonable and feasible?
4. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
5. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
6. Has the firm had experience performing work of similar nature, size and scope?
7. Does the proposer's past experience complement the services being sought, or is the proposer's past experience appropriate to qualify the proposer to perform these services?
8. What are the qualifications of the personnel that the firm will commit to the project?
9. Did the proposer allocate sufficient staff resources?
10. Has the proposer addressed all goals, objectives, service demands, and required deliverables specified in the RFP?

Continued on following page

## COMPARISON CHART OF BIDDING METHODS

Considerations	Invitation for Bid	Request for Proposals
When this method is typically used?	To obtain simple, common, or routine services that may require personal or mechanical skills. Little discretion is used in performing the work.	To obtain complex services in which professional expertise is needed and may vary. Where different methods and approaches may be applied during performance.
Cost/Value of services:	\$10,000 or more.	\$10,000 or more.
Formal bidder Q&As with submittal deadline:	Optional.	Optional.
Bidders' conference or site inspection or walk-through:	Optional. Held as needed depending on the service being sought in the IFB.	Optional. Held if needed to clarify service needs.
How award is made?	Lowest responsible bidder, assuming all other conditions of the bid are equal.	Highest scored or most qualified responsible proposer.
Oral interviews:	N/A	Optional. Held if needed.
What information is submitted?	Bid form and other material deemed necessary by the program, as requested in the IFB/RFP.	Narrative proposal including a budget for the project, as requested in the IFB/RFP.
Scope of Work (SOW) considerations:	SOW contains all product requirements or specifications and delivery schedules.	Objectives, major tasks, and timelines are identified. Proposer offers detailed work plans, methods, etc.

### 106 *MULTI-YEAR CONTRACTS*

If a multi-year contract extends beyond the current term of the program (next continuation hearing or referendum process), the program must have reserves available to meet contract obligations that will be incurred subsequent to the current term of the program.

Alternatively, for office or property leases that extend beyond the current term of the program, a release clause may be used that relieves the program of future lease obligations in the event the program is terminated (see Sections M612 and C611 in the Department's Policies for Marketing Programs).

### 107 *LICENSES TO USE PROGRAM INTELLECTUAL PROPERTY*

Licensing agreement templates (and any amendments to the templates) for use of intellectual property owned by boards and councils must be submitted for review by the Department prior to use.

108 *CONTRACTS FOR \$10,000 AND ABOVE - EXECUTION OF CONTRACTS*

Boards, councils and commissions either have statutory authority for the chief executive officer to sign contracts, or the authority of the chief executive officer to sign contracts is provided by resolution, order, or motion.

All contracts entered into by marketing boards, councils and commissions shall include Terms and Conditions (see Attachment #2).

109 *REVIEW OF CONTRACTS FOR \$10,000 AND ABOVE*

For all marketing programs, contracts for \$10,000 and above shall be subject to audit as part of the annual Agreed-upon Procedures (AUP) compliance audit according to the procedures provided in the AUP Manual posted on the Marketing Branch website at [www.cdfa.ca.gov/mkt/mkt](http://www.cdfa.ca.gov/mkt/mkt).

For advisory boards and councils, the Department requires each board or council entering into contracts to file an “Annual Contracts Report” (see sample form provided in Attachment #3) within 90 days after the beginning of its fiscal year that lists all contracts entered into for the current fiscal year for \$10,000 or more and ensure through the AUP compliance audit process that all contracts listed on these reports that are identified for audit are:

- a. properly executed (signed),
- b. on file in the board or council office, and
- c. the board or council has adhered to relevant standards and rules.

Upon reviewing the Annual Contracts Report, Department staff may request a complete copy of any contract that it determines should be subject to additional review. If a board or council executes no contracts for \$10,000 or more during a given fiscal year, it must nevertheless submit a letter or contracts report form disclosing that fact. If a board or council executes additional contracts for \$10,000 or more after it has filed its Annual Contracts Report for the current fiscal year, it shall submit an addendum to the report.

**STANDARD AGREEMENT – SAMPLE GUIDELINE**

	AGREEMENT NUMBER
	BUDGET LINE ITEM

1. This Agreement is entered into between the (marketing program name) and the Contractor named below:

BOARD/COUNCIL/COMMISSION NAME

CONTRACTOR'S NAME

2. The term of this Agreement is through \_\_\_\_\_

3. The maximum amount of this Agreement is: \$ \_\_\_\_\_

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work page(s)

Exhibit B – Budget Detail and Payment Provisions page(s)

Exhibit C – Terms and Conditions (Attachment #2) page(s)

Exhibit D – Additional Provisions page(s)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>	
<i>CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)</i>	
BY (Authorized Signature)  	DATE SIGNED/ <i>Do not type</i>
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS	
<b>(Marketing Program Name)</b>	
<i>BOARD/COUNCIL/COMMISSION NAME</i>	
BY (Authorized Signature)  	DATE SIGNED/ <i>Do not type</i>
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS	

## ATTACHMENT #2

### TERMS AND CONDITIONS - GUIDELINES

1. APPROVAL: This Agreement is of no force or effect until signed by both parties. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, approved by the parties, and included as an attachment to the original contract.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without written consent of the (marketing program name) Manager or designee.
4. AUDIT: Contractor agrees that the (marketing program name) shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated.  
*Select one of the following options for Term and Condition 5:*
- 5a. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the (marketing program name), 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.
- 5b. MUTUAL INDEMNIFICATION: Each party hereto agrees to be responsible and assume mutual and proportional liability for its own wrongful or negligent acts or omissions, or those of its officers, agents or employees to the full extent required by law.
6. TERMINATION FOR CAUSE: The (marketing program name) may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement.
7. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the (marketing program name).

ATTACHMENT #2

8. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor agrees to comply will all Federal and State equal opportunity and nondiscrimination laws, rules, and regulations.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

*Select one of the following options for Term and Condition 9:*

9a. TIMELINESS: Time is of the essence in this Agreement.

9b. BREACH PROVISION: The Contractor may be in material breach under this Agreement if it fails to comply with any term of this Agreement. In the event of a material breach, (name of marketing program) shall provide in writing a Notice of Breach to the Contractor within ten (10) calendar days upon discovery of breach. Contractor shall have ten (10) calendar days from receipt of the notice to cure the breach. If the Contractor fails to cure the breach within the time prescribed by this Agreement, (name of marketing program) may suspend payments, demand repayment of all funding, terminate the Agreement, or take any other action deemed necessary to recover costs.

10. COMPENSATION: Unless otherwise specified in the scope of work, the consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes.

11. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

12. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

ATTACHMENT #3

## ANNUAL MARKETING PROGRAM CONTRACTS REPORT FORM

Programs may complete this form or submit their own report as long as it contains the same information.

Name of Board or Council:	
Name of Person Completing Form:	Email Address:
Fiscal Year for Report:	Date of Report:

Contract Number:	Contractor Name:	
Budget Line Item Funding Contract:	Contract Approved by Board or Committee Action Number and Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:
Type of Project [Check Appropriate Box]:		
<input type="checkbox"/> Promotion <input type="checkbox"/> Research <input type="checkbox"/> Lease <input type="checkbox"/> Audit <input type="checkbox"/> Management <input type="checkbox"/> Other		
Name of Project (Provide description):		

Contract Number:	Contractor Name:	
Budget Line Item Funding Contract:	Contract Approved by Board or Committee Action Number and Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:
Type of Project [Check Appropriate Box]:		
<input type="checkbox"/> Promotion <input type="checkbox"/> Research <input type="checkbox"/> Lease <input type="checkbox"/> Audit <input type="checkbox"/> Management <input type="checkbox"/> Other		
Name of Project (Provide description):		



ATTACHMENT #3

Contract Number:	Contractor Name:	
Budget Line Item Funding Contract:	Contract Approved by Board or Committee Action Number and Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:
Type of Project [Check Appropriate Box]:		
<input type="checkbox"/> Promotion <input type="checkbox"/> Research <input type="checkbox"/> Lease <input type="checkbox"/> Audit <input type="checkbox"/> Management <input type="checkbox"/> Other		
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