



**CALIFORNIA DEPARTMENT OF EDUCATION**

1430 N Street

Sacramento, CA 95814-5901

**F. Y. 09-10 thru 11-12**

**DATE:** July 01, 2009

**CONTRACT NUMBER:** CRPM-9000

**PROGRAM TYPE:** FACILITIES RENOVATION AND REPAIR

**PROJECT NUMBER:** 01-6131-00-9

**LOCAL AGREEMENT FOR CHILD DEVELOPMENT SERVICES**

**CONTRACTOR'S NAME:** CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

By signing this contract and returning it to the State, you are agreeing to use the funds identified below for the purpose of child care and development renovation and repair projects to maintain compliance with State health and safety requirements, to comply with the American with Disabilities Act (ADA), or to purchase or replace equipment necessary for the health and safety in accordance with the CHILD CARE AND DEVELOPMENT FUND-PROGRAM REQUIREMENTS FOR FACILITIES RENOVATION AND REPAIR PROJECTS (Exhibit D), the attached APPLICATION (Exhibit C) with any modifications noted, and SERVICE LOCATION(s) (Exhibit B) which by this reference are incorporated herein. The Contractor's signature also certifies compliance with "Standard Provisions for State Contracts" (Exhibit A) which are attached hereto and by this reference incorporated herein.

These funds shall not be used for any purpose considered nonreimbursable pursuant to the current Center-Base Funding Terms and Conditions (FT&Cs) and Title 5, California Code of Regulations. For contractors using ARRA Funds, American Recovery and Reinvestment Act of 2009 Reporting Requirements (Attachment A), Supplemental Terms and Conditions for Contracts Using ARRA Funds (Attachment B) are attached hereto and by this reference incorporated herein. Funding of this contract is contingent upon appropriation and availability of funds. This contract may be terminated immediately by the State if funds are not appropriated or available in amounts sufficient to fund the State's obligations under this contract. The period for which expenditures may be made with these funds shall be from July 01, 2009 through June 30, 2012. The total amount payable pursuant to this agreement shall not exceed \$18,016.00.

Expenditure of these funds shall be reported quarterly to the Child Development Fiscal Services Division (CDFS) on Form CDFS-9529. Quarterly reporting must be submitted for reimbursement of expenditures. For non-local educational agencies, expenditures made for the period July 1, 2009 through June 30, 2010 shall be included in their 2009/10 audit. Expenditures for the period July 1, 2010 through June 30, 2011 shall be included in the 2010/11 audit. Expenditures for the period July 1, 2011 through June 30, 2012 shall be included in the 2011/12 audit. All audits are due by the 15th of the fifth month following the end of the contractor's fiscal year or earlier if specified by the CDE. The audits for School Districts and County Offices shall be submitted in accordance with Education Code Section 41020.

Any provision of this contract found to be in violation of Federal or State statute or regulation shall be invalid but such a finding shall not affect the remaining provisions of this contract. Exhibit A, Standard Provisions for State Contracts attached.

STATE OF CALIFORNIA		CONTRACTOR				
BY (AUTHORIZED SIGNATURE)		BY (AUTHORIZED SIGNATURE)				
PRINTED NAME OF PERSON SIGNING Margie Burke, Manager		PRINTED NAME AND TITLE OF PERSON SIGNING				
TITLE Contracts, Purchasing & Conf Svcs		ADDRESS				
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 18,016	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE		Department of General Services use only		
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$ 0	(OPTIONAL USE) See Attached					
TOTAL AMOUNT ENCUMBERED TO DATE \$ 18,016	ITEM See Attached	CHAPTER	STATUTE			FISCAL YEAR
	OBJECT OF EXPENDITURE (CODE AND TITLE) 702					
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T.B.A. NO.	B.R. NO.			
SIGNATURE OF ACCOUNTING OFFICER See Attached		DATE				

**SUPPLEMENTAL TERMS AND CONDITIONS FOR  
CONTRACTS USING ARRA FUNDS**

1. **ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
2. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
3. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
4. **REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
6. **INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
7. **WHISTLEBLOWER PROTECTION:**  
Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.
8. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
9. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
  - a. The total amount of ARRA funds received by Contractor during the Reporting Period;
  - b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
  - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

08/10/09

**SUPPLEMENTAL TERMS AND CONDITIONS FOR  
CONTRACTS USING ARRA FUNDS**

- (i.) The name of the project or activity;
- (ii.) A description of the project or activity;
- (iii.) An evaluation of the completion status of the project or activity; and
- (iv.) An estimate of the number of jobs created and /or retained by the project or activity;

d. For any contracts equal to or greater than \$25,000:

- (i.) The name of the entity receiving the contract;
- (ii.) The amount of the contract;
- (iii.) The transaction type;
- (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
- (v.) The Program source;
- (vi.) An award title descriptive of the purpose of each funding action;
- (vii.) The location of the entity receiving the contract;
- (viii.) The primary location of the contract, including the city, state, congressional district and country;
- (ix.) The DUNS number, or name and zip code for the entity headquarters;
- (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) if the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;

e. For any contracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

***Any other information reasonably requested by the State of California or required by state or federal law or regulation.***

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at [www.FederalReporting.gov](http://www.FederalReporting.gov). The additional requirements will be added to this contract(s).

***PROGRAM REQUIREMENTS***

***for***

***FACILITIES RENOVATION AND REPAIR  
PROJECTS  
(CRPM)***

***July 1, 2009 – June 30, 2012***



2009/10 – 2011/12  
**PROGRAM REQUIREMENTS FOR  
FACILITIES RENOVATION AND REPAIR PROJECTS**

Facilities Renovation and Repair (FRR) funds must be used to maintain compliance with health and safety requirements established by state licensing regulations and local health and fire departments, to comply with the Americans with Disabilities Act (ADA) of 1990, or to purchase or replace equipment necessary for the health and safety of children enrolled in the child care and development program services. These funds must be used for child care facilities serving state-certified children only.

The following program requirements are provided to assist the designated legal entity in meeting the legislative intent. Each contractor is required, as a condition of its contract with the California Department of Education (CDE), Child Development Division (CDE), to adhere to these requirements and *California Code of Regulations, Title 5, Education* (hereinafter, Title 5 regulations) pertaining to Child Development Programs, in addition to all other applicable laws and regulations. Any variance from these requirements, the applicable *Title 5* regulations, laws and regulations could be considered a noncompliance issue and subject the contractor to possible termination of the contract.

A portion of this contract may be fully or partially funded through a grant from the federal Department of Health and Human Services and subject to Code of Federal Regulations (CFR) 45, Parts 98 and 99, the Child Care and Development Block Grant Act of 1990, as amended, an Discretionary grant award which is issued as a result of appropriations made by the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5), and Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 USC 9858. If the Catalogue of Federal Domestic Assistance (CFDA) number is 93.713 (shown as FC# in the funding block), the fund title is Child Care and Development Block Grant subject to the Child Care and Development Block Grant (CCDBG) Act of 1990 as amended, and the current approved CCDF State plan, including all approved amendments or revisions, the Omnibus Appropriations Act, 2009 (Public Law 111-8), Section 5082, Public Law 101-508, as amended, Section 658J and 658S, and Public Law 102-586.

## **I. GENERAL PROVISIONS**

### **A. Notification of Address Change**

1. Contractors shall notify the CDE in writing of any change in the mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied by:
  - a. Board minutes verifying the change in address; and
  - b. A copy of the notification to the Internal Revenue Service of the address change.
2. Contractors shall notify the CDE in writing of any proposed change in operating facility address(s) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood or earthquake.
3. Proposed site changes for Prekindergarten and Family Literacy Part-and Full-Day programs, associated with the California (CA) state preschool program contract, a request must be submitted to the CDE and shall include:
  - a. The name and address of the current program location
  - b. The name and address of the proposed program location
  - c. Verification that the proposed program location is within the attendance area of an elementary school with a decile ranking of 1 to 3, inclusive, based on the 2005 base Academic Performance Index
  - d. The site license for the proposed program location

Approval shall be granted upon receipt of documentation confirming that the proposed program location meets the statutory requirements as specified in *Education Code* Section 8238.4(a)(2). The CDE shall approve or deny the request within thirty (30) calendar days of receipt of the request.

B. Notification of E-mail Contact Changes

Contractors shall assure that at all times the e-mail address on file at the CDE is accurate for contacting the following individuals:

1. Executive Officer
2. Program Director

Contractors shall utilize procedures provided by the CDE to electronically add new addresses or delete old addresses, as needed.

C. Issuance and Use of Checks

Except for external payroll services, private contractors shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDE.

Private contractors shall require two (2) authorized signatures on all checks unless: (1) the contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount (2) the annual audit verifies that appropriate internal controls are maintained.

D. Prohibition Against Loans and Advances

Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies. Contractors shall not advance unearned salary to employees. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received.

E. Contractor's Termination for Convenience

1. General Termination for Convenience

A contractor may terminate the contract for any reason during the contract term. The contractor shall notify the CDE of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

Within fifteen (15) days from the date the contractor notifies the CDE of its intent to terminate the contract, the contractor shall submit a current inventory of equipment purchased in whole or in part with contract funds.

Upon receipt of a notice of intent to terminate, the CDE will transfer the program to another contractor as soon as practicable.

The State shall only be obligated to compensate the contractor for net reimbursable program costs in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The State shall offset any monies the contractor owes the State against any monies the State owes under this contract.

2. Changes in Laws or Regulations

The CDE shall notify contractors in writing of changes in laws or regulations prior to

the effective date or as soon as possible after enactment. If any laws or regulations are changed substantially during the contract period, the contractor shall have the option to discontinue performance and be relieved of all obligations for further performance.

The contractor has thirty (30) calendar days from receipt of notification of pending changes to notify the CDE in writing of the contractor's intent to terminate if the required changes are unacceptable to the contractor. The contract shall be deemed terminated sixty (60) calendar days after receipt of the notification of the intent to terminate.

F. Applicability of *Corporations Code*

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the *Corporations Code* including standards of conduct and management of the organization.

G. Conflicts of Interest

For any transaction to which the contractor is a party and the other party is:

1. An officer or employee of the contractor or of an organization having financial interest in the contractor; or
2. A partner or controlling stockholder or an organization having a financial interest in the contractor; or
3. A family member of a person having a financial interest in the contractor, the transaction(s) shall be fair and reasonable and conducted at arm's length

Based on corporate law (*Corporations Code* sections 310, 5233-5234, 7233 and 9243 as applicable) the general rules that would be followed to ensure that transactions are conducted "at arm's length" include:

1. Prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and
2. All parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes

If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser, licensed by the California Office of Real Estate Appraisers. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance. Any transaction described in this paragraph shall be disclosed by the auditor in the notes to the financial statement in the annual audit. (OMB A-110, Subpart D)

Rental costs for equipment owned by affiliated organizations, officers or other key personnel of the contractor or their families are allowable only as use or depreciation allowance.

H. Americans with Disabilities Act

By signing this contract, the contractor assures the CDE that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination



on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

I. Air or Water Pollution Violations (*Government Code* Section 4477)

By signing this agreement, the contractor swears under penalty of perjury that the contractor is not: (1) in violation of any order or resolution not subject to review promulgated by the state Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the *Water Code* for violation of waste discharge requirements or discharge prohibitions; (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

J. Recycled Paper Certification (*Public Contract Code* sections 10233, 10308.5, 10354, 12161 and 12200)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in *Public Contract Code*, Sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the *Public Contract Code*, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content.

K. Child Support Compliance (*Public Contract Code* Section 7110)

For any agreement in excess of \$100,000, the contractor acknowledges in accordance with *Public Contract Code* Section 7110 that: (1) 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 (2) the contractor to the best of its knowledge it 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.

L. Unlawful Denial of Services (*Government Code* Section 11135 and *California Code of Regulations, Title 5, Section 4900*)

1. No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.
2. With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

As used in this section, "disability" means any mental or physical disability as defined in *Government Code* Section 12926.

M. Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

N. Priority Hiring Consideration (*Public Contract Code* Section 10353)

If the contract includes services in excess of \$200,000, the contractor shall give priority consideration in filing vacancies in positions funded by the contract to qualified recipients of aid under the *Welfare and Institutions Code* Section 11200.

O. *Labor Code* Workers' Compensation (*Labor Code* Section 3700)

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement.

P. Corporate Qualifications to do Business in California

1. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
2. "Doing business" is defined in *Revenue and Taxation Code (R&TC)* Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
3. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

Q. Equipment Bidding Requirements

For private agencies, all equipment purchases, exceeding five thousand dollars (\$5,000, including tax) will not be approved unless at least three (3) bids or estimates have been obtained. The contractor shall purchase the goods or services from the lowest responsible bidder. If three (3) bids or estimates cannot be obtained, the contractor shall maintain adequate documentation of the reason(s) why three bids or estimates could not be obtained (e.g., an emergency situation). Public agencies shall comply with applicable sections of the *Public Contract Code*.

R. Equipment Inventory

Property records must be maintained that include a description of the equipment, serial number or other identification number, the source of the equipment, the acquisition date, the cost of the equipment, the location, use and condition of the equipment and any ultimate disposition date including date of disposal and sale price if applicable. A physical inventory of equipment must be taken at least every two years and reconciled with property records. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

S. Renovation and Repair

Improvement of sites and adjacent grounds to meet or continue to meet *California Code of Regulations, Title 22, Social Security, Community Care Licensing Standards* is reimbursable if the improvements do not unnecessarily increase the value of a facility. For private contractors, such proposed work in excess of five thousand dollars (\$5,000, including tax), unless performed by contractor's staff, shall have at least three (3) bids or estimates and shall be awarded to the lowest responsible bidder. If the contractor cannot obtain three (3) bids or estimates, the contractor shall maintain adequate documentation of the reason(s) why three (3) bids or estimates could not be obtained as well as the reasonableness of cost in the absence of competition. Public agencies shall comply with applicable sections of the *Public Contract Code*.

II. SUBCONTRACTS

A. Subcontracts Excluded from Requirements of this Section

The following types of relationships are not subject to the requirements contained in this Section:

1. Employment agreements
2. Facility rental or lease agreements
3. Payment arrangements with family child care homes and/or providers
4. Medical or dental service agreements
5. Bookkeeping/auditing agreements, except for Section II.B
6. Food services agreements
7. Janitorial and groundskeeping agreements
8. A subcontract with a public agency
9. Subcontracts with an individual for less than ten thousand dollars (\$10,000), except for Section II.B.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

All subcontracts, rental agreements and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

B. Bids for Subcontracts

Private contractors shall obtain at least three (3) bids or estimates for subcontracts that exceed five thousand dollars (\$5,000). The subcontract shall be awarded to the lowest responsible bidder. If three (3) bids or estimates cannot be obtained, the private contractor shall:

1. Maintain documents in its records that establish the reasons why three (3) bids or estimates could not be obtained; and
2. Maintain documents in its records that establish the reasonableness of the proposed expenditure without three (3) bids or estimates.
3. Prior to execution of a subcontract and commencement of work, include in their records a proposed line-item budget which shows the costs of the services to be performed. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Contractors shall demonstrate that approval of the subcontract is cost effective to the State. For proposed renovation and repair subcontracts, private agencies shall include documents showing that the bidder selected by the contractor has obtained a payment

bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.

One copy of the subcontract will be retained by the CDE contractor. No reimbursement shall be made to the contractor or subcontractor for work performed prior to CDE approval.

Subcontracts subject to the approval of the CDE shall be rebid at least once every three (3) years or more often if specified by the CDE in its annual approval of the subcontract. Public agencies shall award subcontracts in accordance with the *Public Contract Code*. The contractor shall not split subcontracts to avoid competitive bidding requirements.

Subcontracts for auditing and/or bookkeeping services shall be rebid and changed every five (5) years unless retention of the same auditor is approved by the CDE.

Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are not reimbursable.

The State does not assume any responsibility for performance of approved subcontracts nor does the State assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.

#### D. Required Subcontract Provisions

Every subcontract shall specify:

1. The dates within which the subcontractor is to perform the contract. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the State.
2. The dollar amount of the subcontract or specify an amount not to exceed a maximum dollar amount.
3. The service(s) to be provided under the subcontract.
4. The responsibilities of each party under the subcontract.
5. That the subcontractor, and the agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers or employees or agents of the State of California.
6. That modifications of the subcontract shall be in writing, and that for subcontracts in excess of the amount stated in the annual child development contract, prior written CDE approval is required unless the subcontract is otherwise exempt from prior CDE approval.
7. That the subcontract is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.
8. Remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars (\$10,000).
9. That the State of California retains title to any equipment or supplies purchased with State funds and that the equipment shall be returned to the contractor upon termination of the subcontract.
10. That the subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm or corporation that may be

- injured or damaged by the subcontractor in the performance of the subcontract.
11. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in *California Code of Regulations, Title 2, Chapter 5, Section 8107*.

#### E. Recommended Subcontract Provisions

The following items are suggested for inclusion in subcontracts to protect the interests of the contractor:

1. Funding of the subcontract should be made subject to the appropriation and availability of funds from the State.
2. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.
3. The subcontract should provide that the subcontractor, its agents and employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.
4. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.

#### F. Audit Requirements for Subcontracts

The audit of the subcontract shall be submitted to the CDE along with the contractor's audit.

### III. CONTRACTOR RESPONSIBILITIES

Agencies must use the funding described in the Application for Facilities Renovation and Repair Funds pursuant to FY 2009/10 FRR to accomplish deferred or major maintenance facility projects to bring facilities into compliance with the Americans with Disabilities Act of 1990 and the *California Code of Regulations, Title 22, Division 12* licensing requirements. All FRR funds must be expended to repair or renovate eligible center-based sites where agencies have active state-certified child care and development program services with center-based service contracts.

#### A. Use of Funds

##### ADA Compliance

Repair or renovate a child care facility to increase accessibility for children with disabilities. Examples of eligible ADA repair, renovation, or installation projects include, but are not limited to:

- ADA accessibility signs
- Door casings or replace doors impeding access
- Fixed or built-in seating or tables
- Children's bathroom lavatories, fixtures, or controls
- Parking surface(s) to establish required ADA accessible parking spaces and access aisles in parking areas designated for CDE, CDD programs
- Appropriate access routes
- Elevated wheelchair access platforms
- Wheelchair access ramps, landings, surfacing, or transfer systems
- ADA compliant fixed storage equipment (i.e., cabinets, shelves, and/or closets)

## Health and Safety Compliance

Repair or renovate a child care facility to resolve either of the following:

- Health and Safety Code violation issued by the Department of Social Services, Community Care Licensing Division; CDE; or local fire or health department
- Health and Safety Code violation or concerns that were revealed through an contractor's internal, self-assessment program

Examples of Health and Safety approvable repair, renovation, or installation projects include, but are not limited to:

- Industrial cleaning of facility
- Repaint building interior or exterior walls
- Playground areas and equipment
- Wallpaper removal or replacement
- Air conditioning or heating systems
- Observation windows in infant centers
- Safety lighting
- Faulty electrical wiring
- Outdated appliance replacement
- Carpet, linoleum, or tile replacement
- Windows, doors, or floors
- Interior or exterior portable or permanent storage areas
- Unsafe sidewalk(s)
- Shade structures
- Fencing
- Cushioned areas around and under play equipment
- Window screens, blinds, or other window coverings
- Toilets, hand washing, and bathing facilities
- Tables and chairs
- Sewer line repairs
- Outside surveillance cameras

## B. Funding Restrictions

Nonreimbursable costs will be determined in accordance with the General Child Care & Development (CCTR) Funding Terms and Conditions, Section V.G., "Nonreimbursable Costs" for fiscal years 2009-10, 2010-11, and 2011-12. In addition, FRR funds cannot be used to accomplish any of the following examples of non-approvable costs:

- Bonus payments for early completion of work
- Contractor claims against the grantee connected costs
- Costs incurred prior to the execution of the Local Agreement for Child Development Services contract
- Meetings, workshops, trainings, foods, or beverages expenses
- Application incurred expenses
- Sewer line extensions
- Violation of federal, state, local laws, ordinances, regulations, fines or penalties
- Indirect costs
- Interest charges or payments on bonds or indebtedness required to finance project costs
- Existing facility modification to increase licensing capacity or program expansion
- Overhead expenses such as costs for rental/lease of space, utilities, office supplies, and other miscellaneous project costs
- Major improvement that increases the value of a child care facility

- Inspections (e.g., playground or termite inspections) payments
- Personnel costs
- Equipment or supplies such as books and dramatic play areas to meet curriculum needs
- Purchase equipment or supplies such as cots, linens, rugs
- Child care facility construction or purchase
- Land improvement purchase or lease
- Libraries, staff rooms, or other areas renovation that do not serve families or children
- Portable building replacement, relocation or installation
- Travel or per diem expenses
- Phone lines or intercom systems replacement or installation
- Inside observation cameras
- Sewer line(s) extensions
- Bulletin boards
- Vacuum or steam cleaners

The contractor must comply with their commitments to ensure the facilities benefiting from the use of the funds as described above will be available for, and used to serve, certified children in a CDE child care and development funded program **for at least three consecutive years** from the date of project completion.

If the CDE contractor is notified to vacate the site where the funding was expended within three years from the date of project completion, the CDE contractor must provide written notification to the CDE of this condition within 14 calendar days of the property owner's notice to the CDE contractor.

If the contractor voluntarily elects to move the program(s) benefiting from the funds described above to a new site, the CDE will bill the contractor for the portion of the three years the facility is not in use by CDE programs.

The CDE acknowledges that some adjustments to the proposed use of funds may be necessary when the contractor finalizes necessary bids for proposed projects. If adjustments to the proposed estimated costs occur which result in a change in the scope of work (e.g., some projects will not be completed because estimated costs were too low), a contract amendment is required before work commences. Contractors must contact the CDE in writing prior to the end of the contract period to request a contract amendment.

#### C. Reimbursement Costs

Agencies receiving an award of funding are required to comply with the funding calculations described in the FY 2009-10 FRR Request for Applications including the proration of costs for state certified and non-certified enrollment. The CDE will bill agencies for any unauthorized expenditures or expenditures that do not comply with the cost proration calculations.

Reimbursable costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations.

#### D. Reporting Requirements

##### 1. ARRA Reporting Requirements

- a. See Attachment A, Letter signed by State Superintendent Jack O'Connell dated August 28, 2009, titled American Recovery and Reinvestment Act of 2009 Reporting Requirements.

- b. See Attachment B, Supplemental Terms and Conditions for Contracts Using ARRA Funds.
2. CDE Reporting Requirements
- a. Private agencies (including proprietary entities) that receive \$500,000 or more in total Federal funds are required to have an Organization-Wide Audit (OWA) performed in accordance with OMB Circular A-133 and the "Audit Guide for Audits of Child Development, Nutrition and Adult Education Programs" (Audit Guide) prepared by CDE's Audits and Investigations Division (AID). Governmental and other public agencies (excluding school districts, county office of education and community college districts) must comply with the requirements of OMB Circular A-133 and CDE's "Audit Guide." All other agencies (excluding school districts, county offices or education and community colleges) must submit a contractor audit performed in accordance with the CDE's "Audit Guide."
  - b. These are one-time-only funds and expenditure of these funds shall be reported quarterly to the Child Development Fiscal Services (CDFS) on Form CDFS 9529 with fiscal quarters ending September 30, December 31, March 31, and June 30. Quarterly reporting must be submitted for reimbursement of expenditures. Fiscal Report for Child Development Support Contracts (CDFS 9529) form is available online at:

[www.cde.ca.gov/fg/aa/cd/documents/cdfs952909.doc](http://www.cde.ca.gov/fg/aa/cd/documents/cdfs952909.doc)

Send the completed CDFS 9529 form to your assigned Fiscal Analyst at:

California Department of Education  
Child Development Fiscal Services  
1430 N Street, Suite 2213  
Sacramento, CA 95814-5901

If you have questions, please contact Holly Miller, Associate Governmental Program Analyst, Child Development Division, at 916-323-7195 or by e-mail at [cddrfa@cde.ca.gov](mailto:cddrfa@cde.ca.gov).



