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17 **UNITED STATES DISTRICT COURT**  
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 B & L PRODUCTIONS, INC., d/b/a  
20 CROSSROADS OF THE WEST;  
21 BARRY BARDACK; RONALD J. DIAZ,  
22 SR.; JOHN DUPREE; CHRISTOPHER  
23 IRICK; LAWRENCE WALSH;  
24 MAXIMUM WHOLESALE, INC., d/b/a  
25 AMMO BROS.; CALIFORNIA RIFLE &  
26 PISTOL ASSOCIATION,  
27 INCORPORATED; SOUTH BAY ROD  
28 AND GUN CLUB, INC.; and SECOND  
AMENDMENT FOUNDATION,

Plaintiffs,

v.

22nd DISTRICT AGRICULTURAL  
ASSOCIATION; STEVE  
SHEWMAKER, President of 22nd  
District Agricultural Association, in his  
official and individual capacity;  
RICHARD VALDEZ, Vice President of  
22nd District Agricultural Association, in  
his official and individual capacity;  
KAREN ROSS, Secretary of California  
Department of Food & Agriculture, in her  
official capacity; DOES 1-50,

Defendants.

CASE NO: 3:19-cv-00134-CAB-NLS

**DECLARATION OF PHILIP Y.  
OKITA; EXHIBIT 1**

[Filed concurrently with Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss and in Support of Plaintiffs' Motion for Summary Judgment, Request for Judicial Notice, and the Declarations of Anna M. Barvir, Tiffany D. Chevront, Tracy Olcott, Barry Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Lawrence Walsh, Shaun Redmon, Richard Travis, Jon Sivers, and Alan Gottlieb]

Date: May 1, 2019  
Judge: Hon. Cathy Ann Bencivengo  
Action Filed: January 21, 2019

**DECLARATION OF PHILIP Y. OKITA**

1  
2 1. I am a law clerk at the law firm Michel & Associates, P.C., attorneys of  
3 record for plaintiffs in this action. I have personal knowledge of the facts set forth  
4 herein and, if called and sworn as a witness, could and would testify competently  
5 thereto.

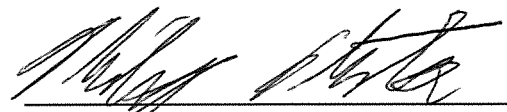
6 2. On or about October 22, 2018, I sent an email to Ms. Kalia Mitchell at  
7 the California Department of Food and Agriculture. The email memorialized a call I  
8 had with her earlier that day. It also clarified that I needed help locating “Section 6.25  
9 of the Contract Manual governing the Fair Board.”

10 3. On or about October 29, 2019, my email request was forwarded to Ms.  
11 Donna Ruhm, Concessions Director for the San Diego County Fair and 22<sup>nd</sup> District  
12 Agricultural Association. Ms. Ruhm responded by email shortly thereafter, attaching  
13 a copy of the California Department of Food & Agriculture’s *Contract Manual for*  
14 *District Agricultural Associations* (Revised January 2010).

15 4. In the ordinary course of business, I forwarded both Ms. Ruhm’s email  
16 and all attachments to my supervising attorney. In the ordinary course of business,  
17 she would have saved those documents on the firm’s electronic document  
18 management system, IMANAGE. On or about April 17, 2019, I viewed, pulled, and  
19 printed these documents. A true and correct copy of the *Contract Manual for District*  
20 *Agricultural Associations* is attached as **Exhibit 1**.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed within the United States on April 17, 2019.

23  
24   
25 \_\_\_\_\_  
Philip Y. Okita  
26 Declarant  
27  
28

# **EXHIBIT 1**



# **CONTRACT MANUAL**

## **For District Agricultural Associations**

*Revised January 2010*



California Department of Food & Agriculture  
Division of Fairs and Expositions



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## **CHAPTER 1: GENERAL INFORMATION**

### **1.00 Web Portal for Contract Information and Documents**

Documents for contracting, including this manual, are available to fairs online on the Fairs and Expositions (F&E) Portal. The Portal address is [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual). Accessing the portal requires computer access to the Internet and a password. The fair can log in under the generic “Administrative” option and use the password “contract”. The fair can also log in under their individual fair name and individual fair password.

Documents and links published at the portal are as follows:

#### **Contract Manual**

- Contract Manual

#### **Quarterly Report**

- Quarterly Report (Excel spreadsheet format with DVBE calculator built-in)

#### **Contract Forms**

- Rental Agreement (with Standard Terms and Conditions)
- Rental Agreement Amendment (Template)
- Service Contract (Std. 213)
- Standard Contract Terms and Conditions F-31 (for use with older F-31 Rental Agreement Forms)
- Service Contract Amendment (Std. 213A)
- Contract Transmittal (Std. 215)
- Independent Contractor or Employee Form (IRS Publication 1779 or SS-8)
- Contractor Certification Clause (CCC-307)

#### **Bid Packages**

- Invitation for Bid (IFB)
- Two-Tier Generic Request-For-Proposal (RFP)
- Two-Tier Carnival RFP
- High-Score Generic RFP
- High-Score Carnival RFP

#### **CSCR Advertising**

- California State Contracts Register (CSCR) Advertising
- CSCR Blanket Ad for fairtime

#### **DVBE Forms**

- Disabled Veteran Business Enterprise (DVBE) Declaration (Std. 843)
- Bidder and Subcontractor Performance Declaration (GSPD-05-105)
- DVBE Program Requirements
- DVBE Bid Incentive Instructions
- DVBE Search

#### **Small Business Search**

- Small Business Enterprise Search

## 1.05 What is a Contract?

A contract is an agreement between two or more parties, which the law will enforce (see California Civil Code §1549). It is formed by an offer, acceptance of that offer and bound together by a legally valid consideration. A contract sets forth terms, conditions, and the statement of all work to be performed. **All contracts are required to be in writing.** Basic requirements for a contract include:

- Identification of the parties.
- Term for the performance or completion of the contract (dates or length of time).
- Consideration (the contract must clearly express the maximum amount to be paid and the basis on which payment is to be made: e.g., a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery).
- Scope (the work, service, or product to be performed, rendered, or provided. Clear and concise language must be used to describe the scope).
- Other general or unique terms and conditions of the agreement.
- Signature by a person for each party who is authorized to bind that party.

### A. Services Contract or Purchase?

To determine whether a transaction is a services contract or a purchase, the DAA needs to consider which will have the predominant value – the items being purchased, or the services being rendered. The estimated dollar value associated with the goods being supplied versus the services being rendered should be considered, with the predominant value determining whether the transaction is a purchase or a services contract. For example, a contract for painting a building can include the purchase of the paint, but the larger value of the contract would be associated with the application of the paint – therefore making this a services contract.

### B. 119-Day Employees, Civil Service Employee, or Contractor?


Whether or not a person working for a DAA should be classified as an employee or an independent contractor is an important decision. If a DAA misclassifies an employee as an independent contractor, the DAA may get caught by IRS audit, unemployment claim filed by a former worker, a claim filed for worker's compensation benefits filed by a worker, a former contractor filing a Form SS-8 (Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income tax Withholding) or an audit by the State Department of Food and Agriculture Audit Office. The consequences of this being caught and having an independent contractor reclassified as an employee are: The DAA becomes responsible for the employer's and employee's FICA (15.3% of gross wages), Unemployment Taxes (currently \$56 per year per employee), and the federal income tax (20% of gross wages). The DAA may also become liable for the state income tax and worker's compensation. DAAs also face a penalty equal to the amount of the back taxes owed. Likewise, the DAA will owe interest on all back taxes from the due dates; and in the case of an injury, the DAA may be responsible for the support of the injured person for the rest of their life.

The once common IRS "20 Common Law Factors Test" has been replaced by a new category test. Briefly, this test examines the worker employer relation in three areas:

1. Behavioral control covers the amount of control the employer has over the worker in terms of where, when, and how the job is done, among other factors.
2. Financial control dictates how much control the company has over a worker's pay, business expenses, and facility investment.
3. Relationship type is based on written agreements, employee benefits, and length of relationship between the company and worker.

## C. IRS Publication 1779 – Independent Contractor or Employee

Below is the IRS publication for the category test. It can also be obtained directly at the IRS website: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>



**Which are you?**

*For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now. This brochure can help you.*

The courts have considered many facts in deciding whether a worker is an **independent contractor** or an **employee**. These relevant facts fall into three main categories: *behavioral control*, *financial control*, and *relationship of the parties*. In each case, it is very important to consider all the facts – no single fact provides the answer. Carefully review the following definitions.

**BEHAVIORAL CONTROL**

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- **Instructions** – if you receive extensive instructions on how work is to be done, this suggests that you are an employee. Instructions can cover a wide range of topics, for example:
  - how, when, or where to do the work
  - what tools or equipment to use
  - what assistants to hire to help with the work
  - where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an **independent contractor**. For instance, instructions about time and place may be less important than directions on how the work is performed.

- **Training** – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an **employee**.

**FINANCIAL CONTROL**

These facts show whether there is a right to direct or control the business part of the work. For example:

- **Significant Investment** – if you have a significant investment in your work, you may be an **independent contractor**. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an **independent contractor**.
- **Expenses** – if you are not reimbursed for some or all business expenses, then you may be an **independent contractor**, especially if your unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an **independent contractor**.

**RELATIONSHIP OF THE PARTIES**

These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** – if you receive benefits, such as insurance, pension, or paid leave, this is an indication that you may be an **employee**. If you do not receive benefits, however, you could be either an **employee** or an **independent contractor**.
- **Written Contracts** – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

**When You Are an Employee**

- Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, *Wage and Tax Statement*, showing the amount of taxes withheld from your pay.
- You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.

**When You Are an Independent Contractor**

- The business may be required to give you Form 1099-MISC, *Miscellaneous Income*, to report what it has paid to you.
- You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act – SECA). The business does not withhold taxes from your pay. You may need to make estimated tax payments during the year to cover your tax liabilities.
- You may deduct business expenses on Schedule C of your income tax return.

If the proper status determination is still unclear, the Department of Treasury, Internal Revenue Service (IRS) SS-8 Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding form appears on the next page and also is available at the IRS website <http://www.irs.gov/pub/irs-pdf/fss8.pdf>

Upon receipt of this completed form, the IRS will make the determination for you and contact you with their decision. It is important to properly classify 119-day employees. The IRS penalties may be imposed when a 119-day employee is improperly classified as a contractor. Documentation of these determinations and copies of forms used must be kept on file for CDFA Audit Office and/or IRS audit.

## D. Personal Services Contract

Information regarding personal services contracts and when they are allowed is contained in Part 5.15 of this Manual.

**E. SS-8 Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding**

Form **SS-8**  
 (Rev. December 2009)  
 Department of the Treasury  
 Internal Revenue Service

**Determination of Worker Status  
 for Purposes of Federal Employment Taxes  
 and Income Tax Withholding**

OMB No. 1545-0004

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Daytime telephone number ( )	Worker's social security number 	
Telephone number (include area code) ( )	Firm's employer identification number 	Worker's employer identification number (if any) 	

**Note.** If the worker is paid by a firm other than the one listed on this form for these services, enter the name, address, and employer identification number of the payer. ▶

**Disclosure of Information**

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* on page 5 for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

**Parts I-V.** All filers of Form SS-8 must complete all questions in Parts I-IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified.

**Part I General Information**

- This form is being completed by:  Firm  Worker; for services performed \_\_\_\_\_ (beginning date) to \_\_\_\_\_ (ending date)
- Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get worker's compensation benefits, or you were audited or are being audited by the IRS). \_\_\_\_\_
- Total number of workers who performed or are performing the same or similar services \_\_\_\_\_
- How did the worker obtain the job?  Application  Bid  Employment Agency  Other (specify) \_\_\_\_\_
- Attach copies of all supporting documentation (contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements, IRS rulings, etc.). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ \_\_\_\_\_.  
 If both Form W-2 and Form 1099-MISC were issued or received, explain why. \_\_\_\_\_
- Describe the firm's business. \_\_\_\_\_
- Describe the work done by the worker and provide the worker's job title. \_\_\_\_\_
- Explain why you believe the worker is an employee or an independent contractor. \_\_\_\_\_
- Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request?  
 Yes  No  N/A  
 If "Yes," what were the dates of the prior service? \_\_\_\_\_  
 If "Yes," explain the differences, if any, between the current and prior service. \_\_\_\_\_
- If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. \_\_\_\_\_

**Part II Behavioral Control**

- 1 What specific training and/or instruction is the worker given by the firm? .....
- 2 How does the worker receive work assignments? .....
- 3 Who determines the methods by which the assignments are performed? .....
- 4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? .....
- 5 What types of reports are required from the worker? Attach examples. ....
- 6 Describe the worker's daily routine such as, schedule, hours, etc. ....
- 7 At what location(s) does the worker perform services (e.g., firm's premises, own shop or office, home, customer's location, etc.)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. ....
- 8 Describe any meetings the worker is required to attend and any penalties for not attending (e.g., sales meetings, monthly meetings, staff meetings, etc.). ....
- 9 Is the worker required to provide the services personally? . . . . .  Yes  No
- 10 If substitutes or helpers are needed, who hires them? .....
- 11 If the worker hires the substitutes or helpers, is approval required? . . . . .  Yes  No  
If "Yes," by whom? .....
- 12 Who pays the substitutes or helpers? .....
- 13 Is the worker reimbursed if the worker pays the substitutes or helpers? . . . . .  Yes  No  
If "Yes," by whom? .....

**Part III Financial Control**


- 1 List the supplies, equipment, materials, and property provided by each party:  
The firm .....
- The worker .....
- Other party .....
- 2 Does the worker lease equipment? . . . . .  Yes  No  
If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.) .....
- 3 What expenses are incurred by the worker in the performance of services for the firm? .....
- 4 Specify which, if any, expenses are reimbursed by:  
The firm .....
- Other party .....
- 5 Type of pay the worker receives:  Salary  Commission  Hourly Wage  Piece Work  
 Lump Sum  Other (specify) .....
- If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount \$ .....
- 6 Is the worker allowed a drawing account for advances? . . . . .  Yes  No  
If "Yes," how often? .....
- Specify any restrictions. ....
- 7 Whom does the customer pay? . . . . .  Firm  Worker  
If worker, does the worker pay the total amount to the firm?  Yes  No If "No," explain. ....
- 8 Does the firm carry worker's compensation insurance on the worker? . . . . .  Yes  No
- 9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (e.g., loss or damage of equipment, material, etc.)? .....

**Part IV Relationship of the Worker and Firm**

- 1 List the benefits available to the worker (e.g., paid vacations, sick pay, pensions, bonuses, paid holidays, personal days, insurance benefits). \_\_\_\_\_
- 2 Can the relationship be terminated by either party without incurring liability or penalty? . . . . .  Yes  No  
If "No," explain your answer. \_\_\_\_\_
- 3 Did the worker perform similar services for others during the same time period? . . . . .  Yes  No  
If "Yes," is the worker required to get approval from the firm? . . . . .  Yes  No
- 4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. \_\_\_\_\_
- 5 Is the worker a member of a union? . . . . .  Yes  No
- 6 What type of advertising, if any, does the worker do (e.g., a business listing in a directory, business cards, etc.)? Provide copies, if applicable. \_\_\_\_\_
- 7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? \_\_\_\_\_
- 8 What does the worker do with the finished product (e.g., return it to the firm, provide it to another party, or sell it)? \_\_\_\_\_
- 9 How does the firm represent the worker to its customers (e.g., employee, partner, representative, or contractor)? \_\_\_\_\_
- 10 If the worker no longer performs services for the firm, how did the relationship end (e.g., worker quit or was fired, job completed, contract ended, firm or worker went out of business)? \_\_\_\_\_

**Part V For Service Providers or Salespersons.** Complete this part if the worker provided a service directly to customers or is a salesperson.

- 1 What are the worker's responsibilities in soliciting new customers? \_\_\_\_\_
- 2 Who provides the worker with leads to prospective customers? \_\_\_\_\_
- 3 Describe any reporting requirements pertaining to the leads. \_\_\_\_\_
- 4 What terms and conditions of sale, if any, are required by the firm? \_\_\_\_\_
- 5 Are orders submitted to and subject to approval by the firm? . . . . .  Yes  No
- 6 Who determines the worker's territory? \_\_\_\_\_
- 7 Did the worker pay for the privilege of serving customers on the route or in the territory? . . . . .  Yes  No  
If "Yes," whom did the worker pay? \_\_\_\_\_  
If "Yes," how much did the worker pay? . . . . . \$ \_\_\_\_\_
- 8 Where does the worker sell the product (e.g., in a home, retail establishment, etc.)? \_\_\_\_\_
- 9 List the product and/or services distributed by the worker (e.g., meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. \_\_\_\_\_
- 10 Does the worker sell life insurance full time? . . . . .  Yes  No
- 11 Does the worker sell other types of insurance for the firm? . . . . .  Yes  No  
If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance . . . . . \_\_\_\_\_%
- 12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation . . . . . \_\_\_\_\_%
- 13 Is the merchandise purchased by the customers for resale or use in their business operations? . . . . .  Yes  No  
Describe the merchandise and state whether it is equipment installed on the customers' premises. \_\_\_\_\_

**Sign Here**  Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

\_\_\_\_\_ Title ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_  
Type or print name below signature.

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose

Firms and workers file Form SS-8 to request a determination of the status of a worker for purposes of federal employment taxes and income tax withholding.

A Form SS-8 determination may be requested only in order to resolve federal tax matters. If Form SS-8 is submitted for a tax year for which the statute of limitations on the tax return has expired, a determination letter will not be issued. The statute of limitations expires 3 years from the due date of the tax return or the date filed, whichever is later.

The IRS does not issue a determination letter for proposed transactions or on hypothetical situations. We may, however, issue an information letter when it is considered appropriate.

### Definition

**Firm.** For the purposes of this form, the term "firm" means any individual, business enterprise, organization, state, or other entity for which a worker has performed services. The firm may or may not have paid the worker directly for these services.



*If the firm was not responsible for payment for services, be sure to enter the name, address, and employer identification number of the payer on the first page of Form SS-8, below the identifying information for the firm and the worker.*

### The SS-8 Determination Process

The IRS will acknowledge the receipt of your Form SS-8. Because there are usually two (or more) parties who could be affected by a determination of employment status, the IRS attempts to get information from all parties involved by sending those parties blank Forms SS-8 for completion. Some or all of the information provided on this Form SS-8 may be shared with the other parties listed on page 1. The case will be assigned to a technician who will review the facts, apply the law, and render a decision. The technician may ask for additional information from the requestor, from other involved parties, or from third parties that could help clarify the work relationship before rendering a decision. The IRS will generally issue a formal determination to the firm or payer (if that is a different entity), and will send a copy to the worker. A determination letter applies only to a worker (or a class of workers) requesting it, and the decision is binding on the IRS. In certain cases, a formal determination will not be issued. Instead, an information letter may be issued. Although an information letter is advisory only and is not binding on the IRS, it may be used to assist the worker to fulfill his or her federal tax obligations.

Neither the SS-8 determination process nor the review of any records in connection with the determination constitutes an examination (audit) of any federal tax return. If the periods under consideration have previously been examined, the SS-8 determination process will not constitute a reexamination under IRS reopening procedures. Because this is not an examination of any federal tax return, the appeal rights available in connection with an examination do not apply to an SS-8 determination. However, if you disagree with a determination and you have additional information concerning the work relationship that you believe was not previously considered, you may request that the determining office reconsider the determination.

## Completing Form SS-8

Answer all questions as completely as possible. Attach additional sheets if you need more space. Provide information for all years the worker provided services for the firm. Determinations are based on the entire relationship between the firm and the worker. Also indicate if there were any significant changes in the work relationship over the service term.

Additional copies of this form may be obtained by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS website at [www.irs.gov](http://www.irs.gov).

### Fee

There is no fee for requesting an SS-8 determination letter.

### Signature

Form SS-8 must be signed and dated by the taxpayer. A stamped signature will not be accepted.

The person who signs for a corporation must be an officer of the corporation who has personal knowledge of the facts. If the corporation is a member of an affiliated group filing a consolidated return, it must be signed by an officer of the common parent of the group.

The person signing for a trust, partnership, or limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

### Where To File

Send the completed Form SS-8 to the address listed below for the firm's location. However, only for cases involving federal agencies, send Form SS-8 to the Internal Revenue Service, Attn: CC:CORP:T:C, Ben Franklin Station, P.O. Box 7604, Washington, DC 20044.

#### Firm's location:

#### Send to:

Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, American Samoa, Guam, Puerto Rico, U.S. Virgin Islands

Internal Revenue Service  
SS-8 Determinations  
P.O. Box 630  
Stop 631  
Holtville, NY 11742-0630

Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, all other locations not listed

Internal Revenue Service  
SS-8 Determinations  
40 Lakemont Road  
Newport, VT 05855-1555

### Instructions for Workers

If you are requesting a determination for more than one firm, complete a separate Form SS-8 for each firm.



*Form SS-8 is not a claim for refund of social security and Medicare taxes or federal income tax withholding.*



If the IRS determines that you are an employee, you are responsible for filing an amended return for any corrections related to this decision. A determination that a worker is an employee does not necessarily reduce any current or prior tax liability. For more information, call 1-800-829-1040.

**Time for filing a claim for refund.** Generally, you must file your claim for a credit or refund within 3 years from the date your original return was filed or within 2 years from the date the tax was paid, whichever is later.

**Filing Form SS-8 does not prevent the expiration of the time in which a claim for a refund must be filed.** If you are concerned about a refund, and the statute of limitations for filing a claim for refund for the year(s) at issue has not yet expired, you should file Form 1040X, Amended U.S. Individual Income Tax Return, to protect your statute of limitations. File a separate Form 1040X for each year.

On the Form 1040X you file, do not complete lines 1 through 24 on the form. Write "Protective Claim" at the top of the form, sign and date it. In addition, you should enter the following statement in Part II, Explanation of Changes: "Filed Form SS-8 with the Internal Revenue Service Office in (Holtsville, NY; Newport, VT; or Washington, DC; as appropriate). By filing this protective claim, I reserve the right to file a claim for any refund that may be due after a determination of my employment tax status has been completed."

**Filing Form SS-8 does not alter the requirement to timely file an income tax return.** Do not delay filing your tax return in anticipation of an answer to your SS-8 request. In addition, if applicable, do not delay in responding to a request for payment while waiting for a determination of your worker status.

### Instructions for Firms

If a **worker** has requested a determination of his or her status while working for you, you will receive a request from the IRS to complete a Form SS-8. In cases of this type, the IRS usually gives each party an opportunity to present a statement of the facts because any decision will affect the employment tax status of the parties. Failure to respond to this request will not prevent the IRS from issuing a determination letter based on the information he or she has made available so that the worker may fulfill his or her federal tax obligations. However, the information that you provide is extremely valuable in determining the status of the worker.

If you are requesting a determination for a particular class of worker, complete the form for one individual who is representative of the class of workers whose status is in question. If you want a written determination for more than one class of workers, complete a separate Form SS-8 for one worker from each class whose status is typical of that class. A written determination for any worker will apply to other workers of the same class if the facts are not materially different for these workers. Please provide a list of names and addresses of all workers potentially affected by this determination.

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker under section 530 of the

1978 Revenue Act. However, this relief provision cannot be considered in conjunction with a Form SS-8 determination because the determination does not constitute an examination of any tax return. For more information regarding section 530 of the 1978 Revenue Act and to determine if you qualify for relief under this section, you may visit the IRS website at [www.irs.gov](http://www.irs.gov).

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. This information will be used to determine the employment status of the worker(s) described on the form. Subtitle C, Employment Taxes, of the Internal Revenue Code imposes employment taxes on wages. Sections 3121(d), 3306(a), and 3401(c) and (d) and the related regulations define employee and employer for purposes of employment taxes imposed under Subtitle C. Section 6001 authorizes the IRS to request information needed to determine if a worker(s) or firm is subject to these taxes. Section 6109 requires you to provide your taxpayer identification number. Neither workers nor firms are required to request a status determination, but if you choose to do so, you must provide the information requested on this form. Failure to provide the requested information may prevent us from making a status determination. If any worker or the firm has requested a status determination and you are being asked to provide information for use in that determination, you are not required to provide the requested information. However, failure to provide such information will prevent the IRS from considering it in making the status determination. Providing false or fraudulent information may subject you to penalties. Routine uses of this information include providing it to the Department of Justice for use in civil and criminal litigation, to the Social Security Administration for the administration of social security programs, and to cities, states, and the District of Columbia for the administration of their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. We may provide this information to the affected worker(s), the firm, or payer as part of the status determination process.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 22 hrs.; Learning about the law or the form, 47 min.; and Preparing and sending the form to the IRS, 1 hr., 11 min. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File* on page 4.

## 1.10 Conflicts of Interest

### A. Current State Employees, Including 119-Day Employees (PCC §10410)

- Cannot receive compensation from, or hold financial interest in, any employment, activity, or enterprise sponsored or funded by a State agency that is not required as a condition of State employment.
- Cannot contract as independent contractors with any State agency.

### B. Former State Employees, Including 119-Day Employees (PCC §10411)

- For two years past the end of State employment, cannot enter into a contract with a State agency, which they helped to negotiate, plan, or finalize while in State employment.
- For one year past the end of State employment, cannot enter into a contract with a State agency for which they were employed in a policy-making position.

### C. Contracts for Consulting Services

When entering into a contract for consulting services, the DAA must determine whether a consultant's proposed duties create any reporting requirements under the Political Reform Act. Under some circumstances, consultants may be required to report economic interests; may be prohibited from receiving gifts; and/or may be disqualified from participating in certain decisions. Covered consultants may include:

- Individuals who perform the same or substantially all the same duties for the DAA that would otherwise be performed by an individual holding a position specified in the Conflict of Interest Code under Government Code Section 87302.
- Individuals who serve the DAA in the capacity of participating in making a governmental decision as defined in CCR, Title 2, Division 6, Political Practices Commission 18702.2.
- Individuals performing services acting as a consultant with authority to:
  - Approve a rate, rule or regulation.
  - Adopt or enforce a law.
  - Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement.
  - Authorize the DAA to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval.
  - Grant approval to the specifications for a contract.
  - Grant the DAA approval to a plan, design, report, study, or similar item.
  - Adopt, or grant DAA approval of, policies, standards, or guidelines for the DAA.

#### Prohibited Financial Interest

Employees and certain consultants may be prohibited from participating in decisions or participating in "making contracts" if they have a financial interest. See GC 1090 et seq. and GC 87400 et seq.

#### Follow– Up Contract

Consultants are prohibited from bidding on, or being awarded a contract that is required, suggested, or otherwise deemed appropriate in the end product of a previous consulting contract with them. See PCC 10365.5 to determine applicability.

## **1.15 Circumvention of Contracting Requirements**

Statutes, regulations, and policies governing the state's contracting process are designed to protect the state's interest. Therefore, it is not appropriate to seek artificial exceptions to contracting requirements or to seek loopholes. In particular, circumvention of required competitive bidding or contract approval is illegal. Pass-through contracts in which the vendor or another governmental agency is doing something that your agency cannot lawfully do directly, such as avoiding competitive bidding, are common types of circumvention.

## 1.20 Contract Review and Approval

### A. Dollar Amount for Determining Approval Requirement

- To determine the dollar amount to be used in following the contract approval requirements in this section, use the total dollar amount including all years of a multi-year contract, as well as all option year amounts if contract has options to renew.
- For a contract that has no dollar amount (such as an in-kind services contract), the value of the services must be converted to a dollar amount for the purposes of determining approvals required.
- For a contract which was originally under the dollar amount requiring approval and is being amended, use the total dollar amount of the original contract and the amendment(s) to determine approvals required. If approvals are now required, the original contract package and amendment package(s) must now be submitted for approval.

### B. Send to F&E

All contracts over \$75,000.00. After contract review, F&E will forward contracts to California Fair Services Authority (CFSA) for insurance and/or indemnification language review if applicable.

### C. Send to CFSA

- All hazardous contracts up to \$75,000.00.\*
- All non-hazardous contracts over \$15,000.00 and up to \$75,000.00 for which liability insurance is required.\*
- All contracts with indemnification language changes up to \$75,000.00.\*

\*Note: CFSA review and approval is limited to the insurance and indemnification portions of the contract package.

### D. Neither F&E nor CFSA Approval Required

- Non-hazardous contracts up to \$15,000 for which liability insurance is required, but no indemnification changes have been made. \*\*
- Non-hazardous contracts up to \$75,000 for which liability insurance is not required and no indemnification changes have been made. \*\*

\*\*Note: Review and approval of these contracts and insurance is delegated to the fair. Contract packages must be compliant with all applicable laws, rules and procedures and will be reviewed by audit.

### E. Multi-Year Contract Renewal Insurance

- When a multi-year contract has met one of the criteria above for submittal to F&E or CFSA, a renewal insurance certificate must be submitted to CFSA annually with a copy of the originally approved contract.
- When a contract is multi-year, but does not fall into any category requiring submittal to F&E or CFSA, it is not necessary to submit renewal insurance certificates to CFSA. Note, however that it is the responsibility of the fair to ensure that current insurance is in place for the life of the contract.

## 1.25 DAA Board Approval of Contracts

The DAA Board must determine what level of contract approval authority to delegate to the DAA CEO or other staff. A board may give a delegation of authority based upon dollar amount and/or type of contracts. For all contracts that do not fall under the delegation of authority, individual board approval and a formal board resolution must be done prior to the entering into of the contract.

### A. Delegation of Authority

- Each DAA's *Delegation of Authority (Delegation)* **expires annually on December 31<sup>st</sup>.**
- The DAA's Board of Directors must re-hear, approve, and **submit to F&E a new Delegation annually before December 31st.**
- Also, each time the DAA appoints a new CEO or other authorized person, a new Delegation must be heard, approved, and submitted.
- Typically, a board still requires that at subsequent meetings they receive a listing of all contracts executed using the delegation for their review and information.
- Contracts exceeding one year do not fall under the Delegation of Authority.
- The Delegation may give more than one person authority, as long as all information for each person is included.
- The Delegation is documented in the form of an excerpt of the Board meeting at which it was approved. It should include:
  - The board meeting date.
  - The expiration date of the Delegation (the following December 31st).
  - Who motioned and who seconded.
  - The name and title of the person(s) to whom the Delegation is given.
  - The types of contract and dollar amounts approved.
  - Description of any subsequent contract review requirement.
  - "Certified to be a True Copy" signed and dated by the CEO.
  - For any person receiving authority who is not the CEO, their dated signature must also be included on the Delegation.

A suggested Delegation of Authority format is provided on the following page.

**B. Suggested Delegation of Authority Format**

**DELEGATION OF AUTHORITY**

\_\_\_\_\_ District Agricultural Association

**Excerpt from Board of Director’s Meeting held on \_\_\_\_\_.**

Upon motion of Director \_\_\_\_\_ seconded by Director \_\_\_\_\_ and carried, CEO \_\_\_\_\_ is authorized to execute Rental Agreements up to \$ \_\_\_\_\_ Std. 213 Agreements up to \$ \_\_\_\_\_, as long as these contracts do not exceed a one year term, without further authorization from the Board of Directors.

Business Assistant \_\_\_\_\_ is authorized, in the absence of the CEO, to execute Rental Agreements up to \$ \_\_\_\_\_, Std. 213 Agreements up to \$ \_\_\_\_\_ as long as these contracts do not exceed a one year term, without further authorization from the Board of Directors.

All such executed agreements; however, are to be submitted to the Board of Directors for review at the subsequent meeting. This Delegation is effective through December 31, \_\_\_\_\_.

Certified to be a True Copy

Also authorized by this Delegation:

\_\_\_\_\_  
CEO (Signature)

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**C. Board Resolution**

For any contract not covered by the Board’s Delegation of Authority to the CEO, DAA board approval is required prior to execution of the contract. If the contract requires F&E approval (see Part 1.20 of this Manual), then a certified Board Resolution (Resolution) approving the contract must be submitted to F&E as part of the contract package. The Resolution must include the following:

- The board meeting date.
- Who motioned and who seconded.
- Contract number.
- The name of the contractor, date/time of the contract, and dollar amount of the contract (If the contract includes options to renew, then the term(s) and dollar amount(s) must be included).
- “Certified to be a True Copy” signed and dated by the CEO.

**D. Suggested Board Resolution Format**

**BOARD RESOLUTION**

\_\_\_\_\_ District Agricultural Association

**Excerpt from Board of Director’s Meeting held on \_\_\_\_\_.**

Upon motion of Director \_\_\_\_\_ seconded by Director \_\_\_\_\_ and carried that the following contract is approved by the board:

Contract Number: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Dates/term of Contract: \_\_\_\_\_

Dollar Amount: \_\_\_\_\_

Certified to be a True Copy

\_\_\_\_\_  
CEO

\_\_\_\_\_  
Date

## **E. Contracts with Other Public Entities**

When contracting with another governmental entity (non-state agency) such as a city, county, district, or college, obtain a Board Resolution from the governmental entity. If the contract requires F&E approval (see Part 1.20 of this Manual) then a copy of this Resolution must be submitted to F&E as part of the contract package.

## **1.30 Quarterly Reports**

At the end of each quarter, each DAA must send a report to F&E that lists all of the Standard Agreements (210 and 213) and Rental Agreements (F-31) and amendments processed during that quarter, regardless of the dollar amount or the term of the contract. For each contract, the report must contain:

- Contract number
- Name of Contractor
- Type of Contractor (for example: carnival)
- Contract Term
- Dollar Amounts
- DVBE Qualified
- DVBE Dollar Amount Contracted
- Personal Service Determinations when applicable §19130 (b)

A sample Quarterly Report format is on the next page of this Manual. The form is available on the F&E Portal and is designed to be downloaded. Using the electronic version of this form/spreadsheet provides the fair with a method of tracking the DVBE contracting percentage (i.e., the form does this automatically).





## **1.35 Contract Management**

### **A. Contract Manager**

The DAA must designate an employee as contract manager (manager) for each contract. The contract manager is responsible for monitoring the contract.

### **B. Contract Management Responsibilities/Procedures**

The DAA must ensure that it has proper controls in place to enforce contract requirements. The DAA should develop written procedures for contract managers to ensure their ability to effectively monitor contracts. These instructions should clearly define the manager's responsibility related to monitoring and enforcing the contract for compliance. Include procedures for ensuring that contract terms and conditions are met, as well as monitoring procedures regarding contract services, deliverables, and capital improvements. Any additional or specific monitoring requirements for a particular contract that are not covered by the DAA's general contract management procedure should be clearly defined and provided in writing to the manager of that contract. Contract management procedures must include:

- Procedures for monitoring progress of work to ensure that services are performed satisfactorily regarding quantity, quality, objectives, timeframes, and manner specified in each contract.
- Monitoring of DVBE compliance (see Part 4.10 of this Manual) when applicable.
- A process for the review and approval of invoices and verifying fulfillment of all contract requirements before providing the final invoice.
- Procedures for requiring supporting documentation in certain situations, such as when contractor expenditures differ from those stated in the contract.
- Procedures for monitoring and documenting contractor performance as necessary (see Contractor Performance info below).

### **C. Contractor Performance**

Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's contract file.

- When work under a contract is unsatisfactory, a contract manager should:
  - Notify the contractor in writing by certified mail.
  - Explain why the work is not satisfactory and what corrective action is expected.
  - Give a specified period of time in which to satisfactorily perform the work.
- In addition, the letter should inform the contractor that if the problems are not corrected, or if performance does not satisfactorily improve, the agency will terminate the contract; have the work finished by another contractor; and hold the original contractor liable for any additional costs, including the costs of administration and re-bidding of the work.
- If the contract manager and the contract officer are uncertain of sufficient cause to terminate the contract and assess damages, they may request a legal opinion from the DAA's legal counsel.
- After reviewing the case, legal counsel may make recommendations for an appropriate settlement of the subject contract and outline the necessary steps to be taken.

**D. Contract Manager Restrictions**

- The contract manager is not authorized to take the following actions:
  - Instruct the contractor to start work before the contract is executed and approved.
  - Change the description or scope of work of the contract.
  - Direct the contractor to do work that is not specifically described in the contract.
  - Sign the contract as the agency's authorized signatory unless authorized in writing.
  - Sign any contractor's contract form.
- The contract manager must not authorize payment to the contractor for any work not performed satisfactorily.
- In addition, the contract manager is not authorized to do the following without an executed and approved contract amendment in place:
  - Extend the time period of the contract.
  - Allow the contractor to incur costs over the original limit set in the contract.

**E. Ethics**

No contract manager shall accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with the DAA. Such circumstances could be construed as intent to influence the contract manager in his or her official duties or as a reward for any official action performed by the contract manager (See GC §19990 et seq.). Other ethical issues include the following:

- Contract managers shall not make outside purchases of materials or services from any business entity in which they have a financial interest.
- Employees are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship.
- Even the appearance of questionable or unethical practices is detrimental to both employees and the DAA.
- Resolution of any questionable relationships or practices should be referred to your supervisor.

## **CHAPTER 2: COMPETITIVE BIDDING REQUIREMENTS**

### **2.00 Contracts Exempt from Bidding**

Certain contract types are normally exempt from the bid process. These include:

- Entertainment contracts (note that entertainment coordinator/director contracts are not exempt from bidding, only entertainment itself).
- Most rental agreements (see C below).
- Contracts with other governmental entities.
- Interagency Agreements.

### **2.05 Bidding Requirements (PCC §10335)**

#### **A. Contracts \$5,000 and Under**

May be informally (rather than formally) bid. The DAA may request quotes by telephone, by fax, in person, or in writing. At least two quotes should be obtained.

#### **B. Contracts *over* \$5,000, and not Otherwise Exempt From Bidding**

Must be either formally bid, or awarded using the Alternative Bid Process (if under \$250,000.00) described in Part 2.15 of this manual. Formal bidding shall be done through either the Request for Proposals (RFP) **or** Invitation for Bids (IFB) process. Please see the IFB and RFP information in Part 2.10 of this manual.

***Pre-review by F&E of carnival bidding packages prior to their release is required.  
Pre-review by F&E of other bidding packages prior to their release is suggested.***

#### **C. Rental Agreements**

There is no legal requirement to bid rental agreements, except for carnival contracts (see Part 2.20). It is, however, often in the best interest for a DAA to use the bid process for these contracts. This is especially true for long term rental agreements. The Division of Fairs and Expositions strongly encourages DAAs to bid out these contracts whenever possible.

### **2.10 Formal Bid Types**

#### **A. Invitation for Bid (IFB)**

An IFB is a public request for bids to provide a specific service. The contract award must go to the bidder with the lowest responsive and responsible bid, or all bids must be rejected. The DAA's IFB package should ask: "Here is exactly what we want; what will you charge us?" Contracts commonly bid by an IFB process are: horse stalls, portable toilets, radios, golf carts, and so forth. Fairs should use the "fill-in-the-blank" boilerplate package when using this process.

#### **B. Request for Proposals (RFP)**

An RFP is a public request for proposals to provide technical services or a specified product, or to solve a defined problem. Contract award is based not only upon lowest cost, but also upon evaluation of the technical proposal.

There are two forms of RFPs: Two-Tier and High Score.

1. The **Two-Tier RFP process** requires submission of technical proposals for evaluation by a selection committee using objective criteria specified in the RFP. The bidders submit cost proposals in separate sealed envelopes. If the proposal receives the required minimum score on the technical evaluation of the proposal, the cost proposal envelope is opened. Award of the contract goes to the qualified bidder with the lowest cost or highest revenue generation proposal.
2. The **High Score RFP process** requires submission of technical proposals which a selection committee evaluates and scores based upon the objective criteria stipulated in the RFP. **Cost must be weighted a minimum of 30 points out of the total score of 100 points.** The proposal receiving the highest score is awarded the contract. The High Score process should only be used when the Two-Tier process cannot adequately meet the fairs needs. Any time this method is used by a DAA, a detailed justification of why this method is in the best interest of the DAA must be kept on file and also must be attached to the Std. 215, "Contract Summary" form of the resulting contract package.

## 2.15 Alternative Bid Process

The alternative bid procedure may be utilized for contracts for services with a dollar amount over \$5000.00 and less than \$250,000.00. This process is allowed pursuant to Government Code §14838.5 and permits state agencies to award contracts based upon quotes received from at least two certified small businesses or certified Disabled Veteran Business Enterprises (DVBE's), therefore eliminating the need for the lengthy formal bid process. Contract opportunities using the alternative bid procedure are **not advertised** in the California State Contract Register (CSCR). DAAs using this alternative procedure shall:

1. Obtain written quotes from at least two certified small businesses or certified Disabled Veteran Business Enterprises (DVBE's) for the services required. (DAAs are strongly encouraged to obtain quotes from more than two eligible businesses when possible.) To locate certified small businesses and DVBE's by service category go to [www.dgs.ca.gov](http://www.dgs.ca.gov) and select Small Business and Disabled Veteran Business Enterprise Services under Featured Links at left of page. Then select Search for Certified SBs and DVBEs by Specific Criteria.
2. Verify the businesses' certified small business or DVBE status and maintain evidence of certifications in the contract file by including either:
  - a) Copies of the small business or DVBE certifications or
  - b) Printouts of pages from DGS website displaying firms' current certification status.

## 2.20 Carnival Bid Requirements

### A. DAAs

Although DAA carnival contracts are considered rental agreements, they must be bid. There are two types of bid packages for carnivals: (1) Two-Tier and (2) High Score. The boilerplate carnival fill-in-the-blank RFP packages are on the F&E Portals for fairs (See Part 1.00 of this manual for portal access directions).

***Pre-review by F&E of carnival bidding packages prior to their release is required.***

**B. County and Citrus Fruit Fairs**

County and Citrus Fruit Fairs must bid their carnival contracts. County and citrus fruit fairs may use our boilerplate carnival bid packages or use documentation provided by their county contracting officials. They must also follow the specific requirements set forth in the Food and Agricultural Code Section 4511:

- 4511 (a) *All county fairs and citrus fruit fairs shall, prior to entering into a carnival contract, do both of the following:*
- 1) *Notify all persons on the department's list of qualified carnival contractors of the contract opportunity at least 180 days prior to entering into the contract.*
  - 2) *Provide all applicants for the carnival contract a hearing before the board or governing authority on their proposal.*
- (b) *If a county fair or citrus fruit fair enters into a carnival contract with a person other than the highest bidder, it shall submit a justification for that action to the department.*
- (c) *No county fair or citrus fruit fair shall enter into a carnival contract for a term which exceeds three years without the approval of the department.*

**2.25 Advertising in the California State Contract Register (CSCR) (PCC §10356)**

Contracts not exempt from the bid process and over \$5,000 are subject to advertisement in the California State Contracts Register (CSCR) unless the contract is awarded using the Alternative Bid Process described in Part 2.15 of this Manual.

**A. Advertising for Fairtime Services**

F&E publishes a blanket ad in the CSCR covering fair time services only. Therefore, DAAs do **not** need to run their own CSCR ad for services that are during or specifically for fairtime only. A copy of this blanket ad is included on the next page of this manual. Also, the blanket ad is viewable online at [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd), select California State Contracts Register, click on Special Announcements, and scroll to District Agricultural Association Fairs Contracts. The ad includes a summary of types of services, but may be used for fairtime contracts not listed.

**B. Advertising for Non-Fairtime Services**

For non-exempt services that may exceed \$5000.00, and are not awarded using the Alternative Bid Process, and are for other than fairtime only, DAAs must place an advertisement in the CSCR.

For further information about the CSCR and the CSCR advertising process and requirements log go to [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd), select California State Contracts Register, click on User Login, New User at right of screen; or contact Lynn Brown at (916) 375-4441, email: [cscr.support@dgs.ca.gov](mailto:cscr.support@dgs.ca.gov) Their address is:

**DEPARTMENT OF GENERAL SERVICES**  
 eProcurement Division  
 California State Contracts Register  
 707 3rd Street, 2nd floor  
 West Sacramento, CA 95605

## **C. CSCR Blanket Ad for fairtime**

### **District Agricultural Association Fairs Contracts**

Food and Agriculture  
Division of Fairs and Expos

Contact Person: David Hillis  
Phone: (916) 263-2961

#### **Special Notice**

District Agricultural Association Fairs Contracts Announced

The Department of Food and Agriculture, Division of Fairs and Expositions, has oversight responsibility for the State -sponsored district fairs. A wide variety of services are required by these fairs and include, but are not limited to, the summary below.

#### **Security**

Local law enforcement, private security, crowd control, building security, armored car service, and event management firms.

#### **Maintenance**

Janitorial, refuse removal, manure removal from stalls, pest control services, and dust inhibitor treatments.

#### **Entertainment**

Stage acts, fireworks display, carnival, circus, rodeo, tractor pulls, racing ground acts, motorized events, and bungee cord jumping.

#### **Concessions**

Food, beverage, novelty, and games.

#### **Rentals**

Portable horse stalls, street sweepers, heavy equipment, tents and booths, livestock, portable stage, generators, portable bleachers, video screen equipment and projection services, portable trailers, portable toilets, golf carts, and crane service.

#### **Electrical Lighting and Sound**

Electrical cable to exhibitor's stage lighting, grounds and stage sound.

#### **Maintenance/Minor Construction Projects Under \$10,000**

Miscellaneous projects including fencing, plumbing, roofing and gutters, bleacher repair, paving, building alterations electrical, HVAC, and concrete.

#### **Medical Health**

Ambulance, paramedics, first-aid centers, nurses, and EMTs.

#### **Printing**

Stationery, business cards, premium books, brochures, fair time itineraries, and facility maps.

#### **Advertising**

Artwork, copywriting and media buying for posters, radio, television, newspaper, and magazine.

#### **Publicity**

Press releases, photographs, promotion and public relations.

#### **Decorations**

Flags, banners, balloons, signs, and floriculture.

#### **Gate and Parking Services, Transportation**

Staffing and/or coordination of parking, admission, gates and credentials, programs, and bus transportation.

#### **Miscellaneous Services**

Trophies and ribbons, computer systems, talent agencies, coordinators, promotional consultants, master planners, exhibit building superintendents, judges, laborers, and ticket sales.

Each fair maintains their own bidders lists and awards their own contracts. For information regarding a fair's contracting opportunities, contact the fair directly. For fair contact information, go to [www.cdfa.ca.gov/fe](http://www.cdfa.ca.gov/fe).

## 2.30 Non-Competitively Bid Contract Requests (NCB)

In the rare instance a DAA is unable or unwilling to bid a contract (that is not already exempt from bidding), the DAA shall seek approval from F&E in advance using the NCB process.

Please contact the F&E contracts office in advance and we will consider these requests on a case-by-case basis. Plan to complete the NCB Contract Justification form available at [www.dgs.ca.gov](http://www.dgs.ca.gov) under "standard forms" prior to requesting F&E review.

## 2.35 Certified Small and Microbusiness Program

The Small Business (SB) and Micro-business (MB) Certification Programs were established to increase business opportunities for the SB and MB communities within the State of California and are governed by regulation (Title 2, Section 1896.4 and 1896.12). The programs are designed to help SB's and MB's participate in a more level playing field with certain advantages when competing against other non-SB's and non-MB's for state contracts and purchases.

### A. Definitions

Small business means a business certified by the DGS Office of Small Business and Disabled Veterans Business Enterprise Compliance (OSDC) in which:

1. The principal office is located in California.
2. The officers are domiciled in California.
3. The business is independently owned and operated.
4. The business, with any affiliates, is not dominant in its field of operation.
5. And either:
  - a. The business, together with any affiliates, has 100 or fewer employees and average annual gross receipts of \$14,000,000 (14 million) or less over the previous three years, or
  - b. The business is a manufacturer with 100 or fewer employees.

Microbusiness means a small business certified by OSDC in which:

1. The principal office is located in California.
2. The officers are domiciled in California.
3. The business is independently owned and operated.
4. The business, with any affiliates, is not dominant in its field of operation.
5. And either:
  - a. The business, together with any affiliates, has 25 or fewer employees and average annual gross receipts of \$3,500,000 (3.5 million) or less over the previous three years, or
  - b. The business is a manufacturer with 25 or fewer employees.

Certified small business or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a "commercially useful function" defined as follows:

1. Is responsible for the execution of a distinct element of the work of the contract.
2. Carries out its obligation by actually performing, managing or supervising the work involved.
3. Performs work that is normal for its business services and functions.



4. Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. A small or microbusiness contractor, subcontractor or supplier is not performing a “commercially useful function” if its role is limited to that of an extra participant in transaction, contract or project through which funds are passed in order to obtain the appearance of small business or microbusiness participation [Government Code Section 14837(d)(4)].

**B. How The Preference Works**

Certified small business or microbusinesses can claim the five percent preference when submitting a bid on a state contract. A non-small business, may receive a preference of five percent if the business commits to subcontract at least twenty-five percent of its net bid price with one or more small businesses or microbusinesses. The five percent preference is used only for computation purposes, to determine the winning bidder and does not alter the amounts of the resulting contract. The value of the preference is limited to \$50,000 when a contract award is based upon award to the lowest compliant bid. A contract awarded on the basis of the five percent preference is awarded to the small business, microbusiness or non-small business for the actual amount of its bid.

**IFB or Two-Tier RFP**

An example of the method used in determining the successful bidder for an IFB, or the cost component of a Two-Tier RFP follows:

Bidder	Bid Amount	Bid after preference	
One	\$30,750	\$30,750	Claims small business or microbusiness status but is not a certified small business or microbusiness; does not claim small business subcontractor participation
Two	\$28,975	\$28,975	Does not claim to be a small business or microbusiness, and does not claim subcontractor participation
Three	\$29,520	\$29,520	Claims non-small business subcontractor preference and does commit to 25% certified small business or microbusiness participation
Four	\$29,870	\$28,421	Claims small business or microbusiness status and is a certified small business or microbusiness

For evaluation purposes, five percent of the low responsible bid of \$28,975 would be \$1,448.75 ( $\$28,975 \times .05$ ); that amount would be subtracted from the bids of Three and Four for our computed total of \$28,421.75 ( $\$29,870$  less  $\$1,448.75$ ). The contract would be awarded to bidder Four for \$29,870, as the non-small business subcontractor preference cannot remove an award from a certified small business or microbusiness.

**High-Score RFP**

The method used in determining the successful bidder for a High-Score RFP follows:

1. Calculate the “earned” score for all bidders.
2. If the highest scored proposal is from a non-certified small business or microbusiness, then:
  - a. Calculate five percent (5%) of the highest responsible bidder’s total score.
  - b. Add the amount calculated above to the score of each of the certified small business or microbusinesses. This new amount is the total score.

- c. Award of the contract must go to the bidder with the highest point count.
- d. A non-small business subcontractor preference cannot remove an award from a certified small business or microbusiness.
- e. An example of applying the small business preference to an RFP Secondary follows:

<b>Bidders (*Indicates certified small business)</b>	<b>A*</b>	<b>B</b>	<b>C*</b>	<b>D</b>
Criteria 1 (15 Max. points)	11	14	13	12
Criteria 1 (25 Max. points)	21	21	14	19
Criteria 1 (30 Max. points)	18	15	15	18
Cost (30 Max. points)	29.1	30.0	28.3	29.7
(cost points awarded are based on these bid amounts)	(\$103)	(\$100)	(\$106)	(\$101)
Total "earned" points for each bidder	79.1	80.0	70.3	78.7

3. Bidder B's was the highest scored proposal, a non-certified small business or microbusiness. Therefore points must be re-apportioned after application of the five percent calculation of B's point score. B's bid received 80.0 points. 5% of 80 is 4. All bids from certified small business or microbusinesses will receive 4 additional points. All bids from eligible non-small businesses will receive 4 additional points.

Point awards prior to preference points	79.1	80.0	70.3	78.7
Preference points	4.0	0	4.0	0
Total final points for each bidder	83.1	80.0	74.3	78.7

- a. The highest scored proposal is now the proposal received from A, a certified small business. The contract award amount will be A's original bid amount.

**C. Small Business Preference Procedures**

1. Please include notice of availability of the Small Business Preference Program in all IFBs and RFPs. DAAs should be familiar with the program in order to clearly explain it to the bidders. Bidders needing more information can be referred to the OSDC website.
2. Bidders claiming the small business preference may be requested, but not required, to submit a copy of their certification approval letter from OSDC with the bid or proposal. Failure to provide a copy of their certification approval letter in their response is not a material deviation. A bidder may claim the preference if the bidder submits a complete application for certification to the OSDC by 5 p.m. on the bid due date. Therefore, the DAAs should check the status of the application with OSDC before awarding the contract. DAAs shall evaluate the activities to be performed by any certified small or microbusiness on the proposed contract to assure that the certified small or microbusiness is performing a "commercially useful function as defined in SCM 8.20 C.

**D. Procedures for Tie Bids between Small Business and DVBE or Microbusiness**

In the event of a precise tie between the low responsible bid of a certified small business and the low responsible bid of a certified disabled veteran business enterprise (DVBE), or microbusiness, the contract must be awarded to the DVBE or the microbusiness [GC §14838 (f)].

**E. Small Business Sub-Contractor(s)**

Non-small business bidders will be granted a five percent (5%) non-small business subcontractor preference on a bid evaluation when a responsible non-small business has submitted the lowest priced two-tier responsive bid or the highest scored high score bid when the non-small business bidder:

1. Has included in its bid a notification to the awarding department that it commits to subcontract at least twenty five percent (25%) of its net bid price with one or more small businesses; and
2. Has submitted a timely responsive bid; and
3. Is determined to be a responsible bidder; and
4. Submits a list of the small businesses it commits to subcontract with for a commercially useful function in the performance of the contract. The list of sub-contractors shall include the subcontractors':
  - a. Name
  - b. Address
  - c. Phone Number
  - d. Description of work to be performed
  - e. Dollar amount of percentage per subcontractor

Small business preference qualification information must be included in all bid documents. This must include procedures for claiming small business preference, microbusiness preference, and non-small business contractor/small business subcontractor preference processes. A non-small business, which qualifies for this preference, may not take an award away from a certified small business.

**2.40 Bid Protests (PCC §10341 to 10345)**

With public contracts the opportunity or option to “protest” an award is provided under certain limited circumstances. Also, the forum or jurisdiction for “hearing” protests is prescribed by code PCC §10341 to 10345.

**A. Grounds for Protests**

Those who may protest are as follows:

- **For RFP’s**, any proposer who claims he/she would have been eligible for the award of the contract if the DAA had scored his or her proposal correctly or if the DAA had correctly followed the procedures specified in the Public Contract Code.
- **For IFB’s**, the lowest (highest if contractor to pay fair) responsible bidder meeting the specifications, if he/she is not awarded the contract.

**B. Protest Exclusions**

- In order to protest, a protestant must have submitted a bid/proposal.
- No protest is needed if the DAA rejects all bids based on the interests of the state.



**C. Filing a Protest**

The bidder must file the protest with the DAA and with:

**DEPARTMENT OF GENERAL SERVICES**

Office of Legal Services  
707 3<sup>rd</sup> Street, 2<sup>nd</sup> floor  
West Sacramento, CA 95805

The protest shall be filed prior to the award of the contract. The proposed award must be posted for at least (5) **working days** in a public place at the DAA's Administration Office prior to the DAA awarding the contract. Once the award has been made, a protest may not be filed. Within (5) **calendar days** after filing the protest, the protesting bidder shall file with the DAA and DGS Legal Office a fully detailed and complete written statement specifying the grounds for the protest. **Procedures for filing a protest must be included in all IFB/RFP packages.**

**D. Role of DGS in Protest Process**

Upon receipt of a protest, F&E defers to DGS for the process. Upon receipt of a protest DGS will:

- Determine if the protest is based on permissible grounds. If not, the protestant and the DAA will be notified.
- If the protest is determined to be based on permissible grounds, DGS will inform the protestant of the five-day limit for filing the required written statement concerning all grounds of the protest.
- DGS will request information from the DAA about the intended contract award.
- Upon receipt of the detailed written statement from the protestant, DGS will request pertinent documents from the DAA.
- The DGS hearing officer will evaluate the protest and determine the hearing format to be used (written submission only or public hearing).
- After the hearing process is completed, DGS will render a written decision within 30 days.

## CHAPTER 3: WHAT FORMS SHOULD I USE?

### 3.00 Contract Forms

#### A. Contracts for Services

The forms listed in this section are available on the F&E Portal [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual) and on the DGS website: [www.dgs.ca.gov](http://www.dgs.ca.gov) (Office of Legal Services). Forms are available as fill and print documents and/or for viewing and/or printing.

Use the following forms for contracts for services:

- Std. 210 Short Form Contract – For service contracts under \$10,000.00.
- Std. 213 Standard Agreement – For service contracts \$10,000.00 and over.

The Std. 210 and Std. 213 include language incorporating by reference the General Terms and Conditions (GTC-307). The GTC-307 form is available for viewing (or printing) at the F&E Portal [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual) and the DGS website [www.dgs.ca.gov](http://www.dgs.ca.gov).

For **all** contracts for services, one Contractor Certification Clauses Form (CCC-307) must be completed and signed by the contractor. This form is available for printing at the F&E Portal and the DGS website noted above.

For Std. 213 contracts a Std. 215 Agreement Summary must be completed by the DAA. This summary form is **not** necessary for Std. 210 Short Form contracts (i.e. service contracts for under \$10,000.00).

#### B. Interagency Agreements

The forms listed in this section are available on the F&E Portal [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual) and the DGS website: [www.dgs.ca.gov](http://www.dgs.ca.gov) (Office of Legal Services). Forms are available as fill and print documents and/or for viewing and/or printing.

Interagency agreements are contracts between two State agencies. Two forms have been developed to replace the Std. 13 Agreement:

- Std. 210 Short Form Contract – For interagency agreements under \$10,000.00.
- Std. 213 Standard Agreement – For interagency agreements \$10,000.00 and over.

For these contracts there is a General Terms and Conditions Interagency (GIA 101) form. The GIA 101 form is available for viewing (or printing) at the F&E Portal [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual) and the DGS website noted above. It is **not** necessary to attach copies of the GIA 101 form to the Std. 210 agreement, as it is incorporated by reference and incorporation language is pre-printed on the contract form. It **is** necessary to attach and incorporate the GIA 101 to the Std. 213 Agreement, for Interagency Agreements \$10,000.00 and over.

For Std. 213 Interagency Agreements a Std. 215 Agreement Summary must be completed by the DAA. This summary form is **not** necessary for Std. 210 Short Form Interagency Agreements (i.e. Interagency Agreements for under \$10,000.00).

It is **not** necessary to use the Contractor Certification Clauses Form for interagency agreements.

**C. Rental Agreements**

For rental of fair facilities and grounds, use the F-31 Rental Agreement, available as a fill and print document on the F&E Portal.

The SCTC, F-31 Standard Contract Terms and Contracts language is a part of the F-31 Rental Agreements (Rev. 12/09). For F-31 Rental Agreement forms prior to this version, the SCTC, F-31 must be attached and incorporated into the contract. That form is also available on the F&E Portal.

The Std. 215 Agreement Summary form is required for Rental Agreements over \$75,000.00 only, and is available on the F&E Portal and on the DGS website: [www.dgs.ca.gov](http://www.dgs.ca.gov) (Office of Legal Services).

It is **not** necessary in use the Contractor Certification Clauses Form with Rental Agreements

**D. Use of Contract Forms and Attachments Chart**

The Contract Forms and Attachments Chart follows to assist you in determining which contract forms and attachments to use for the various types of contracts that are prepared.

<b>Contract Type and Amount</b>	<b>Contract Form to Use</b>	<b>Std. 215 Required?</b>	<b>Type of Terms &amp; Conditions Required</b>	<b>Necessary to Attach &amp; Incorporate?</b>
Services under \$10,000	Std. 210	No	*GTC 307	No. Incorporation preprinted on Std. 210
Services \$10,000 and over	Std. 213	Yes	*GTC 307 (Exhibit C)	No. Incorporation preprinted on Std. 213
Rental Agreements	F-31	Yes, if the contract is over \$75,000	SCTC, F-31 (Standard Contract Terms & Conditions)	Yes. Incorporate & attach to each copy of contract
Interagency Agreements under \$10,000	Std. 210	No	*GIA 101	No. Incorporation preprinted on Std. 210
Interagency Agreements \$10,000 and over	Std. 213	Yes	GIA 101	Yes. Incorporate & attach to each copy of the contract
Amendments to Standard Agreements or Interagency Agreements	Std. 213A	Yes	Only the changes to original contract	No. Incorporation on original contract
Amendments to Rental Agreements	Letterhead paper	Yes, if total is over \$75,000	Only the changes to original contract	No. Incorporation on original contract

**E. Standard Contract Terms and Conditions (F-31, Rental Agreement)**

A copy of the SCTC (F-31) is on the following two pages. This form is also available on the F&E Portal at [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual). When retrieving the F-31 form from the F&E Portal the SCTC is included. If you have prior version F-31 forms please retrieve and incorporate the SCTC.



**F. Standard Contract Terms and Conditions (F-31, Rental Agreement)**State of California  
(Rev. 01/10)

Division of Fairs &amp; Expositions

**STANDARD CONTRACT TERMS AND CONDITIONS (F-31, RENTAL AGREEMENT)**

1. **National Labor Relations Board (PCC Section 10296)** Contractor, by signing this contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of a Federal Court which orders the contractor to comply with an order of National Labor Relations Board (Public Contract Code Section 10296).
2. **Resolution of Contract Disputes (PCC 10240.5, 10381)** If, during the performance of this agreement, a dispute arises between contractor and Fair Management, which cannot be settled by discussion, the contractor shall submit a written statement regarding the dispute to Fair Management. A decision by Fair Management shall be made to the Contractor in writing, and shall be final and conclusive. Contractor shall continue to perform contract requirements without interruption during the dispute period.
3. **Non-Discrimination Clause/Statement of Compliance (GC 12990/CCR 8103-8120)** During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provision of the Fair Employment and Housing Act (Gov. Code Section 12900, et seq.) and the applicable regulations promulgated there under (CA Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code Section 12990 (a-f), set forth in Ch. 5 of Div. 4 of Title 2 of the CA Code of Regulations are incorporated into this contract by reference and made part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.  
Contractor by signing this contract hereby certifies, unless specifically exempted, compliance with Gov. Code 12990 (a-f) and CA Code of Regulations, Title 2, Div. 4, Ch. 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Prospective contractor agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
4. **Amendment (GC 11010.5)** Contract modification, when allowable, may be made by formal amendment only.
5. **Assignment** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
6. **Termination** The fair reserves the right to terminate any contract, at any time, upon order of the Board of Directors by giving the contractor notice in writing at least 30 days prior to the date when such termination shall become effective. Such termination shall relieve the fair of any further payments, obligations, and/or performances required in the terms of the contract.
7. **Governing Law** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
8. **Conflict of Interest (PCC 10410, 10411, 10420)** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void (PCC 10420).

9. **Contractor Name Change** An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
10. **Air or Water Pollution Violation (WC 13301)** Under the State laws, the Contractor shall not be: (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 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; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

## **CHAPTER 4: DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PROGRAM REQUIREMENTS AND DOCUMENTATION**

### **4.00 DAA DVBE Requirements**

Per statute, DGS has established a contract DVBE participation goal of at least three percent. The goal applies to the overall dollar amount expended each year by each DAA for qualified contracts for services (excluding exempt contracts noted in A below).

#### **A. Exempt Contracts**

DVBE requirements apply to all contract types except for the following types listed below. Dollar amounts for determining a DAA's overall participation compliance apply only to qualified (non-exempt) contracts. Plan to use the quarterly report form to track both the overall dollar amount of DVBE contracting along with the actual amount of DVBE contracting.

- *Rental Agreements*
- *Entertainment Contracts*
- *Sponsorship Agreements*
- *Contracts with governmental agencies, colleges, universities*
- *Contracts with Joint Powers Authorities*

#### **B. Contract Bid Package DVBE Options**

For contract types not listed in Part A above, the DAA must decide which of one of the following four options will be utilized for the bid package:

- **Option 1 – No DVBE Program Requirements or Incentive**  
The DAA elects to waive both the DVBE program requirement and incentive for this bid package.
- **Option 2 – DVBE Program Requirements Only**  
The DAA elects to include the DVBE program requirement for this bid package but not the incentive.
- **Option 3 – DVBE Incentive Only**  
The DAA elects to include the DVBE incentive for this bid package but waives the program requirement.
- **Option 4 – DVBE Program Requirements and DVBE Incentive**  
The DAA elects to include both the DVBE program requirement and the DVBE incentive for this bid package.

#### **Option 1 – No DVBE Program Requirements or Incentive**

If the DAA elects to use Option 1, they elect not to have the DVBE program requirement or DVBE incentive for the bid package. **Before opting to use Option 1, the DAA should keep in mind that they are still expected to meet the overall participation goal for each year.**

**Option 2- DVBE Program Requirements Only**

If the DAA elects to use Option 2, they elect to include in the bid package a requirement that at least 3% of the dollar value of the bid be performed by a DVBE. This can be achieved either if the bidder is a DVBE, or if the bidder commits to sub-contract with DVBE(s) to perform at least 3% of the value of the bid. **Note that a Good-Faith Effort is no longer an acceptable form of compliance with DVBE requirements.**

Complete instructions and information for both the DAA and bidder regarding the DVBE Program Requirement are included in the DVBE Program Requirements which follows later in this section and is available on the F&E Portal at [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual).

**Option 3 – DVBE Incentive Only**

If the DAA elects to use Option 3, they waive the DVBE program requirement for the bid package, but include the DVBE incentive. This means that bidders are not required to have any portion of the services performed by a DVBE; however, a DVBE bid incentive shall be applied to bids that propose DVBE participation. The incentive amount will be based upon the percentage of DVBE participation as follows:

<b>Confirmed DVBE Participation of:</b>	<b>DVBE Incentive:</b>
5% or Over	5%
4% to 4.99% inclusive	4%
3% to 3.99% inclusive	3%
2% to 2.99% inclusive	2%
1% to 1.99% inclusive	1%

Complete instructions and information regarding the DVBE Incentive including incentive computation instructions are contained in the DVBE Bid Incentive Instructions which follows later in this section and is available on the F&E Portal at [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual). These instructions include not only information for the bidder, but information on how to apply the incentive.

**Option 4 – DVBE Program Requirements and DVBE Incentive**

If the DAA elects to use Option 4, they elect to include in the bid package a requirement that at least 3% of the dollar value of the bid be performed by a DVBE; **and**, they include a DVBE incentive based upon the percentage of DVBE participation as follows:

<b>Confirmed DVBE Participation of:</b>	<b>DVBE Incentive:</b>
5% or Over	5%
4% to 4.99% inclusive	4%
3% to 3.99% inclusive	3%

Complete instructions and information regarding the DVBE Program Requirement with DVBE Incentive are included in the DVBE Program Requirements which follows later in this section and is available on the F&E Portal at [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual). These instructions include not only information for the bidder, but information on how to apply the incentive.

**C. DVBE Contract Options**

The following page is included in bid documents. Depending upon the option that the DAA checks, the attachments listed under that option must be attached to the bid document. Instructions for both the DAA and bidders are included in the documents. The documents are included in this section and are also available on the F&E Portal at [www.cdfa.ca.gov/egov/fe/manual](http://www.cdfa.ca.gov/egov/fe/manual).

**Option 1 – NO DVBE Program Requirements or Incentive**

**The DAA elects to waive both the DVBE program requirement and incentive for this bid package**  
No DVBE requirement is made for this bid package.

**Option 2 – DVBE Program Requirements Only**

**The DAA elects to include the DVBE program requirement for this bid package but not the incentive**  
Bidders must complete and return the attached **Bidder and Sub-Contractor Performance Declaration, GSPD-05-105 (08/09)** and **DVBE Declaration – Bidder Not a Broker, STD.843 (5/06)**, as applicable.  
See also attached **DVBE Program Requirements** for information on how to comply.

**Option 3 – DVBE Incentive Only**

**The DAA elects to include the DVBE incentive for this bid package but waives the program requirement**  
Bidders must complete and return the attached **Bidder and Sub-Contractor Performance Declaration, GSPD-05-105 (08/09)** and **DVBE Declaration, Bidder Not a Broker STD.843 (5/06)**, as applicable.  
See also attached **DVBE Incentive Instructions** for information on how to comply.

**Option 4 – DVBE Program Requirements and DVBE Incentive**

**The DAA elects to include both the DVBE program requirements and incentive for this bid package**  
Bidders must complete and return the attached **Bidder and Sub-Contractor Performance Declaration, GSPD-05-105 (08/09)** and **DVBE Incentive Declarations, STD-843 (05/06)**, as applicable.  
See also attached **DVBE Program Requirements** and **DVBE Incentive Instructions** for information on how to comply.

**D. Compliance Documentation**

DAA's provide an accounting of all contracts filed on a quarterly basis through their quarterly report filed with F&E (please refer to Part 1.30 of this Manual for information). Quarterly reports include columns for tracking and reporting DVBE compliance. Two columns are provided for this: "DVBE qualified contract (yes/no)?" and "DVBE dollar amount contracted." Tracking this information will assist in calculating the overall percentage of DVBE contracting.

To calculate the percentage of DVBE contracting for only DVBE qualified contracts, divide the "DVBE dollar amount contracted" by the "total contract dollar amount" times 100. DAAs that maintain or exceed 3% of their total contracting for DVBE contracts for two out of the past three years have the option to waive DVBE program and/or incentive requirements for a given qualified contract.

Please refer to Part 1.30 of this Manual for information.

**4.05 DAA DVBE Monitoring Responsibilities**

DGS has identified the following DVBE monitoring responsibilities that awarding agencies must fulfill:

**A. Compliance**

1. The DAA shall establish a method of monitoring adherence to the goals. Examples of monitoring methods include:
  - a. Contacting DVBE's listed for participation upon award of contract.
  - b. Post award audits.
2. DAAs must report program violations as follows to the **DGS-OSDC**. Procurement Division Protest and Resolution Unit. PD subsequently forwards the allegations to the Attorney General for possible action. It is unlawful for a person or firm to:
  - a. Knowingly and with intent to defraud, fraudulently obtain or retain certification as a DVBE.
  - b. Willfully and knowingly make a false statement with the intent to defraud, to influence certification of any entity as a DVBE.
  - c. Willfully and knowingly obstruct an investigation regarding DVBE certification.
  - d. Knowingly and with intent to defraud, obtaining or attempting to obtain public moneys to which the person is not entitled under the DVBE Participation Program.
  - e. Establish or cooperate in the establishment of, or exercise control over, a firm found to have violated the above. Violators are guilty of a misdemeanor and may also be liable for a civil penalty. Additionally, violators shall be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in any state contract or project. Prior to reporting an alleged violation of PCC § 10115.10 to **the DGS-OSDC** Protest and Dispute Resolution DAAs must investigate the alleged violation and must prepare a written report of their findings. The written report must also include a recommendation for action to be taken commensurate with the DAA's findings and must be submitted to the Protest and Dispute Resolution Unit **DGS-OSDC** within 60 days of notification to the DAA the alleged violation.
  - f. For contracts with DVBE goals, agencies should include the following language to assist in verifying compliance: "Contractor agrees to provide verification, in a form agreed to by the state, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of award of contract, or with any subsequent amendment."

**B. Substitution of Subcontractors**

1. After award of a contract, the successful bidder/contractor must use the DVBE subcontractors and/or suppliers proposed in the bid or proposal to the state unless a substitution is requested. The bidder/contractor must request the substitution in writing to the DAA and the DAA must approve the substitution in writing prior to commencement of any work by the proposed subcontractor/supplier. At a minimum, the substitution must include:
  - a. A written explanation of the reason for the substitution.
    - A written description of the business enterprise to be substituted, including the DVBE certification status of the firm.
  - b. If applicable, the contractor must also include the reason a non-DVBE subcontractor is proposed for use.
  - c. A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substitution business will perform.
2. The request for substitution of DVBE and the DAA's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (PCC §§ 4100 et seq.) or any other contract requirements relating to substitution of subcontractors.
3. The DAA may consent to the substitution of another person or business as a subcontractor in any of the following situations:
  - a. When the subcontractor listed in the bid, after having a reasonable opportunity to do so, fails or refuses to execute a written contract, when that written contract based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
  - b. When the listed subcontractor becomes bankrupt or insolvent, or goes out of business.
    - When the listed subcontractor fails or refuses to perform his/her subcontract.
    - When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.
    - When the prime contractor demonstrated to the DAA that the name of the subcontractor was listed as a result of an inadvertent clerical error.
    - When the listed subcontractor is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.
    - When the DAA determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the process of the work.
4. Prior to the approval of the prime contractor's request for substitution, the DAA, or its duly authorized officer, must give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor.
5. The listed subcontractor who has been so notified will have five working days within which to submit written objections to the substitution of the DAA. Failure to file these Written objections will constitute the listed subcontractor's consent to the substitution. If written objections are filed, the DAA shall give at least five working days notice in writing to the listed subcontractor of a hearing by the DAA on the prime contractor's request for substitution.

Specific questions regarding the state's DVBE Program and requirements should be directed to:

**DEPARTMENT OF GENERAL SERVICES**

Small Business & DVBE Certification

707 Third Street

West Sacramento CA 95605

(916) 375-4940

[www.dgs.ca.gov/smbus](http://www.dgs.ca.gov/smbus)



C. DVBE Program Requirements

ATTACHMENT \_\_\_\_  
Solicitation Number \_\_\_\_

**CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE (DVBE)  
PROGRAM REQUIREMENTS – NOT FOR GOODS AND INFORMATION TECHNOLOGY**

(Revision Date 09/03/09)

**Please read the requirements and instructions carefully before you begin.**

**AUTHORITY.** The Disabled Veteran Business Enterprise (DVBE) Participation Goal Program for State contracts is established in Public Contract Code (PCC), §10115 et seq., Military and Veterans Code (MVC), §999 et seq., and California Code of Regulations (CCR), Title 2, §1896.60 et seq. **Recent legislation has modified the program significantly in that a bidder may no longer demonstrate compliance with program requirements by performing a “good faith effort” (GFE).**

The minimum DVBE participation percentage (goal) is 3% for this solicitation unless another percentage is specified in the solicitation. A DVBE incentive will be given to bidders who provide DVBE participation, unless stated elsewhere in the solicitation that the DVBE incentive has been waived.

**INTRODUCTION.** The bidder must complete the identified form to comply with this solicitation’s DVBE program requirements. Bids or proposals (hereafter called “bids”) that fail to submit the required form and fully document and meet the DVBE program requirement shall be considered non-responsive.

Information submitted by the intended awardee to comply with this solicitation's DVBE requirements will be verified by the State. If evidence of an alleged violation is found during the verification process, the State shall initiate an investigation, in accordance with the requirements of the PCC §10115, et seq., and MVC §999 et seq., and follow the investigatory procedures required by the 2 CCR §1896.80. Contractors found to be in violation of certain provisions may be subject to loss of certification, penalties and/or contract termination.

Only State of California, Office of Small Business and DVBE Services (OSDS), certified DVBEs (hereafter called “DVBE”) who perform a commercially useful function relevant to this solicitation, may be used to satisfy the DVBE program requirements. The criteria and definition for performing a commercially useful function are contained herein on the page entitled **Resources & Information**. Bidders are to verify each DVBE subcontractor’s certification with OSDS to ensure DVBE eligibility.

**PLEASE READ ALL INSTRUCTIONS CAREFULLY.** These instructions contain information about the DVBE program requirements, bidder responsibilities, and the DVBE Bid Incentive. Bidders are responsible for thorough review and compliance with these instructions.

**To meet the DVBE program requirements, bidders must complete and fully document compliance with the following:**

**Commitment to full DVBE participation -** For a bidder who is a DVBE or who is able to meet the commitment to use identified certified DVBE(s) to fulfill the full DVBE participation goal.

ATTACHMENT \_\_\_\_\_  
Solicitation Number \_\_\_\_\_

**COMMITMENT** – Commit to meet or exceed the DVBE participation requirement in this solicitation by either Method A1 (bidder is a California certified DVBE) or A2 (bidder is not a California certified DVBE). Bidders must document DVBE participation commitment by completing and submitting the Bidder Declaration (GSPD-05-105) located elsewhere within the solicitation document. Failure to complete and submit the required form as instructed shall render the bid non-responsive.

At the State's option prior to award of the contract, a written confirmation from each DVBE subcontractor identified on the Bidder Declaration must be provided. As directed by the State, the written confirmation must be signed by the bidder and/or the DVBE subcontractor(s). The written confirmation may request information that includes but is not limited to the DVBE scope of work, work to be performed by the DVBE, term of intended subcontract with the DVBE, anticipated dates the DVBE will perform required work, rate and conditions of payment, and total amount to be paid to the DVBE. If further verification is necessary, the State will obtain additional information to verify compliance with the above requirements.

**Method A1. Certified DVBE bidder:**

- a. Commit to performing at least 3% of the contract bid amount (unless otherwise specified) with the prime bidder's firm or in combination with another DVBE(s).
- b. Document DVBE participation on the Bidder Declaration GSPD-05-105.
- c. At the State's option a DVBE bidder working in combination with other DVBEs shall submit proof of its commitment by submitting a written confirmation from the DVBE(s) identified as a subcontractor on the Bidder Declaration. When requested, the document must be submitted to the address or facsimile number specified and within the timeframe identified in the notification. Failure to submit the written confirmation as specified may be grounds for bid rejection.

**Method A2. Non-DVBE bidder:**

- a. Commit to using certified DVBE(s) for at least 3% (unless otherwise specified) of the bid amount.
- b. Document DVBE participation on the Bidder Declaration GSPD-05-105.
- c. At the State's option prior to contract award, a bidder shall submit proof of its commitment by submitting a written confirmation from each DVBE identified as a subcontractor on the Bidder Declaration GSPD-05-105. The awarding department contracting official named in the solicitation may contact each listed DVBE, by mail, fax or telephone, for verification of the bidder's submitted DVBE information. When requested, the document must be submitted to the address or facsimile number specified and within the timeframe identified in the notification. Failure to submit the written confirmation as specified may be grounds for bid rejection.

**THE FOLLOWING MAY BE USED TO LOCATE DVBE SUPPLIERS:**

**Awarding Department**

Contact the department's contracting official named in this solicitation for any DVBE suppliers who may have identified themselves as potential subcontractors, and to obtain suggestions for search criteria to possibly identify DVBE suppliers for the solicitation. You may also contact the department's SB/DVBE Advocate for assistance.

ATTACHMENT \_\_\_\_  
Solicitation Number \_\_\_\_

**Other State and Federal Agencies, and Local Organizations**

- STATE:** Access the list of all certified DVBEs by using the Department of General Services, Procurement Division (DGS-PD), online certified firm database at [www.eprocure.dgs.ca.gov](http://www.eprocure.dgs.ca.gov). To begin your search, click on "SB/DVBE Search." Search by "Keywords" or "United Nations Standard Products and Services Codes (UNSPSC) that apply to the elements of work you want to subcontract to a DVBE. Check for subcontractor ads that may be placed on the California State Contracts Register (CSCR) for this solicitation prior to the closing date. You may access the CSCR at: [www.eprocure.dgs.ca.gov](http://www.eprocure.dgs.ca.gov). For questions regarding the online certified firm database and the CSCR, please call the OSDS at (916) 375-4940 or send an email to: [OSDCHelp@dgs.ca.gov](mailto:OSDCHelp@dgs.ca.gov).
- FEDERAL:** Search the U.S. Small Business Administration's (SBA) Central Contractor Registration (CCR) on-line database at [www.ccr.gov/](http://www.ccr.gov/) to identify potential DVBEs and click on the "Dynamic Small Business Search" button. Search options and information are provided on the CCR Dynamic Small Business Search site. First time users should click on the "help" button for detailed instructions. Remember to verify each firm's status as a California certified DVBE.
- LOCAL:** Contact local DVBE organization to identify DVBEs. For a list of local organizations, go to [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus) and select: [DVBE Local Contacts \(New 12/19\) \(.pdf\)](#).

**DVBE BID INCENTIVE.** Unless stated elsewhere in the solicitation that the DVBE incentive has been waived, in accordance with Section 999.5(a) of the Military and Veterans Code an incentive will be given to bidders who provide DVBE participation. For evaluation purposes only, the State shall apply an incentive to bids that propose California certified DVBE participation as identified on the Bidder Declaration GSPD-05-105 and confirmed by the State. The incentive amount for awards based on low price will vary in conjunction with the percentage of DVBE participation. Unless a table that replaces the one below has been expressly established elsewhere within the solicitation, the following percentages will apply for awards based on low price.

Confirmed DVBE Participation of:	DVBE Incentive:
5% or Over	5%
4% to 4.99% inclusive	4%
3% to 3.99% inclusive	3%

As applicable: (1) **Awards based on low price** - the net bid price of responsive bids will be reduced (for evaluation purposes only) by the amount of DVBE incentive as applied to the lowest responsive net bid price. If the #1 ranked responsive, responsible bid is a California certified small business, the only bidders eligible for the incentive will be California certified small businesses. The incentive adjustment for awards based on low price cannot exceed 5% or \$100,000, whichever is less, of the #1 ranked net bid price. When used in combination with a preference adjustment, the cumulative adjustment amount cannot exceed \$100,000.

(2) **Awards based on highest score** - the solicitation shall include an individual requirement that identifies incentive points for DVBE participation.

**A DVBE Business Utilization Plan (BUP) does not qualify a firm for a DVBE incentive.** Bidders with a BUP, must submit a Bidders Declaration (GSPD-05-105) to confirm the DVBE participation for an element of work on this solicitation in order to claim a DVBE incentive(s).

**RESOURCES AND INFORMATION**

For questions regarding bid documentation requirements, **contact the contracting official at the awarding department for this solicitation.** For a directory of SB/DVBE Advocates for each department go to: <http://www.pd.dgs.ca.gov/smbus/advocate.htm>.

The Department of General Services, Procurement Division (DGS-PD) publishes a list of trade and focus publications to assist bidders in locating DVBEs for a fee. To obtain this list, please go to [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus) and select:

- [DVBE Trade Paper Listings \(New 02/09\) \(pdf\)](#)
- [DVBE Focus Paper Listings \(New 02/09\) \(pdf\)](#)

**U.S. Small Business Administration (SBA):**  
Use the Central Contractor Registration (CCR) on-line database.  
Internet contact only –Database: [www.ccr.gov/](http://www.ccr.gov/)

**FOR:**  
Service-Disabled Veteran-owned businesses in California (Remember to verify each DVBE's California certification.)

**Local Organizations:** Go to [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus) and select: [DVBE Local Contacts \(New 02/09\) \(pdf\)](#)

**FOR:**  
List of potential DVBE subcontractors

**DGS-PD EProcurement**  
Website: [www.eprocure.dgs.ca.gov](http://www.eprocure.dgs.ca.gov)  
Phone: (916)375-2000  
Email: [eprocure@dgs.ca.gov](mailto:eprocure@dgs.ca.gov)

**FOR:**

- SB/DVBE Search
- CSCR Ads
- Click on Training tab to Access eProcurement Training Modules including: Small Business (SB)/DVBE Search

**DGS-PD Office of Small Business and DVBE Services (OSDS)**  
707 Third Street, Room 1-400, West Sacramento, CA 95605  
Website: [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)  
OSDS Receptionist, 8 am-5 pm: (916) 375-4940  
PD Receptionist, 8 am-5 pm: (800) 559-5529  
Fax: (916) 375-4950  
Email: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)

**FOR:**

- Directory of California-Certified DVBEs
- Certification Applications
- Certification Information
- Certification Status, Concerns
- General DVBE Program Info.
- DVBE Business Utilization Plan
- Small Business/DVBE Advocates

**Commercially Useful Function Definition**

California Code of Regulations, Title 2, § 1896.61(l):

The term "DVBE contractor, subcontractor or supplier" means any person or entity that satisfies the ownership (or management) and control requirements of §1896.61(f), is certified in accordance with §1896.70, and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function.

As defined in MVC §999, a person or an entity is deemed to perform a "commercially useful function" if a person or entity does **all** of the following:

- Is responsible for the execution of a distinct element of the work of the contract.
- Carries out the obligation by actually performing, managing, or supervising the work involved.
- Performs work that is normal for its business services and functions.
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

**D. Bidder and Subcontractor Performance Declaration (GSPD-05-105)**

State of California—Department of General Services, Procurement Division  
GSPD 05-105 (REV 08/09)

Solicitation Number \_\_\_\_\_

**BIDDER DECLARATION**

**1. Prime bidder information (Review attached Bidder Declaration Instructions prior to completion of this form):**

- a. Identify current California certification(s) (MB, SB, NVSA, DVBE): \_\_\_\_\_ or None \_\_\_\_ (If "None," go to Item #2)
- b. Will subcontractors be used for this contract? Yes \_\_\_ No \_\_\_ (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.

- c. If you are a California certified DVBE: (1) Are you a broker or agent? Yes \_\_\_ No \_\_\_  
(2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? Yes \_\_\_ No \_\_\_ N/A \_\_\_

**2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):**

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, NVSA, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?

**CERTIFICATION:** By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.

Page \_\_\_ of \_\_\_

## BIDDER DECLARATION Instructions

**All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.**

- 1.a.** Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:
- Microbusiness (MB)
  - Small Business (SB)
  - Nonprofit Veteran Service Agency (NVSA)
  - Disabled Veteran Business Enterprise (DVBE)

- 1.b.** Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No," proceed to Item #1.c. If "Yes," enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999 for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses.

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

**Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.**

- 1.c.** This item is only to be completed by businesses certified by California as a DVBE.
- (1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No". The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- (2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If **not** bidding rental equipment, mark "N/A" for "not applicable."

- 2.** If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page \_\_\_ of \_\_\_" on the form.
- If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page \_\_\_ of \_\_\_" accordingly.

*2. (continued) Column Labels*

**Subcontractor Name, Contact Person, Phone Number & Fax Number**—List each element for all subcontractors.

**Subcontractor Address & Email Address**—Enter the address and if available, an Email address.

**CA Certification (MB, SB, NVSA, DVBE or None)**—If the subcontractor possesses a current State of California certification(s), verify on this website ([www.eprocure.pd.dgs.ca.gov](http://www.eprocure.pd.dgs.ca.gov)).

**Work performed or goods provided for this contract**—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

**Corresponding % of bid price**—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

**Good Standing?**—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, NVSA, and/or DVBE status

**51% Rental?**—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

- Enter "N/A" if the:
- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
  - Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "Yes" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "No" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

**Read the certification at the bottom of the page and complete the "Page \_\_\_ of \_\_\_" accordingly.**

**E. DVBE Declaration (Std. 843)**

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES PROCUREMENT DIVISION  
**DISABLED VETERAN BUSINESS ENTERPRISE DECLARATIONS**  
 STD. 843 (Rev. 5/2006)

**Instructions:** The disabled veteran (DV) owner(s) and DV manager(s) of the Disabled Veteran Business Enterprise (DVBE) must complete this declaration when a DVBE contractor or subcontractor will provide materials, supplies, services or equipment [Military and Veterans Code Section 999.2]. Violations are misdemeanors and punishable by imprisonment or fine and violators are liable for civil penalties. All signatures are made under penalty of perjury.

**SECTION 1**

Name of certified DVBE: \_\_\_\_\_ DVBE Ref. Number: \_\_\_\_\_  
 Description (materials/supplies/services/equipment proposed): \_\_\_\_\_  
 Solicitation/Contract Number: \_\_\_\_\_ SCPRS Ref. Number: \_\_\_\_\_  
 (FOR STATE USE ONLY)

**SECTION 2**

**APPLIES TO ALL DVBEs. Check only one box in Section 2 and provide original signatures.**

- I (we) declare that the DVBE is not a broker or agent, as defined in Military and Veterans Code Section 999.2 (b), of materials, supplies, services or equipment listed above. Also, complete Section 3 below if renting equipment.
- Pursuant to Military and Veterans Code Section 999.2 (f), I (we) declare that the DVBE is a broker or agent for the principal(s) listed below or on an attached sheet(s). (Pursuant to Military and Veterans Code 999.2 (e), State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the 3-percent DVBE participation goal.)

All DV owners and managers of the DVBE (attach additional pages with sufficient signature blocks for each person to sign):

_____ (Printed Name of DV Owner/Manager)	_____ (Signature of DV Owner/ Manager)	_____ (Date Signed)
_____ (Printed Name of DV Owner/Manager)	_____ (Signature of DV Owner/Manager)	_____ (Date Signed)

Firm/Principal for whom the DVBE is acting as a broker or agent: \_\_\_\_\_  
 (if more than one firm, list on extra sheets.) (Print or Type Name)

Firm/Principal Phone: \_\_\_\_\_ Address: \_\_\_\_\_

**SECTION 3**

**APPLIES TO ALL DVBEs THAT RENT EQUIPMENT AND DECLARE THE DVBE IS NOT A BROKER.**

- Pursuant to Military and Veterans Code Section 999.2 (c), (d) and (g), I am (we are) the DV(s) with at least 51% ownership of the DVBE, or a DV manager(s) of the DVBE. The DVBE maintains certification requirements in accordance with Military and Veterans Code Section 999 et. seq.
- The undersigned owner(s) own(s) at least 51% of the quantity and value of each piece of equipment that will be rented for use in the contract identified above. I (we), the DV owners of the equipment, have submitted to the administering agency my (our) personal federal tax return(s) at time of certification and annually thereafter as defined in *Military and Veterans Code 999.2, subsections (c) and (g)*. Failure by the disabled veteran equipment owner(s) to submit their personal federal tax return(s) to the administering agency as defined in *Military and Veterans Code 999.2, subsections (c) and (g)*, will result in the DVBE being deemed an equipment broker.

Disabled Veteran Owner(s) of the DVBE (attach additional pages with signature blocks for each person to sign):

_____ (Printed Name)	_____ (Signature)	_____ (Date Signed)
_____ (Address of Owner)	_____ (Telephone)	_____ (Tax Identification Number of Owner)

Disabled Veteran Manager(s) of the DVBE (attach additional pages with sufficient signature blocks for each person to sign):

_____ (Printed Name of DV Manager)	_____ (Signature of DV Manager)	_____ (Date Signed)
---------------------------------------	------------------------------------	------------------------

Page \_\_\_\_ of \_\_\_\_

**PRINT CLEAR**

**F. DVBE Bid Incentive Instructions**

(REV 09/09)

Print Form

ATTACHMENT   
 Solicitation Number

**CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE (DVBE)  
 BID INCENTIVE INSTRUCTIONS**

**Please read the instructions carefully before you begin.**

**AUTHORITY.** The Disabled Veteran Business Enterprise (DVBE) Participation Goal Program for State contracts is established in Public Contract Code (PCC), §10115 et seq., Military and Veterans Code (MVC), §999 et seq., and California Code of Regulations (CCR), Title 2, §1896.60 et seq. Recent legislation has modified the program significantly in that a bidder may no longer demonstrate compliance with program requirements by performing a "good faith effort" (GFE).

This solicitation does not include a minimum DVBE participation percentage or goal.

**DVBE BID INCENTIVE.** A DVBE incentive will be given to bidders who provide DVBE participation. For evaluation purposes only, the State shall apply a DVBE Bid incentive to bids that propose California certified DVBE participation as identified on the Bidder Declaration, GSPD-05-105, (located elsewhere within the solicitation document) and confirmed by the State. The DVBE incentive amount for awards based on low price will vary in conjunction with the percentage of DVBE participation. Unless a table that replaces the one below has been expressly established elsewhere within the solicitation, the following percentages will apply for awards based on low price.

Confirmed DVBE Participation of:	DVBE Incentive:
5% or Over	5%
4% to 4.99% inclusive	4%
3% to 3.99% inclusive	3%
2% to 2.99% inclusive	2%
1% to 1.99% inclusive	1%

As applicable: (1) Awards based on low price - the net bid price of responsive bids will be reduced (for evaluation purposes only) by the amount of DVBE incentive as applied to the lowest responsive net bid price. If the #1 ranked responsive, responsible bid is a California certified small business, the only bidders eligible for the incentive will be California certified small businesses. The incentive adjustment for awards based on low price cannot exceed 5% or \$100,000, whichever is less, of the #1 ranked net bid price. When used in combination with a preference adjustment, the cumulative adjustment amount cannot exceed \$100,000.

(2) Awards based on highest score - the solicitation shall include an individual requirement that identifies incentive points for DVBE participation.

**INTRODUCTION.** Bidders must document DVBE participation commitment by completing and submitting a Bidder Declaration, GSPD-05-105, (located elsewhere within the solicitation document). Bids or proposals (hereafter called "bids") that fail to submit the required form to confirm the level of DVBE participation will not be eligible to receive the DVBE incentive.



ATTACHMENT Solicitation Number 

Information submitted by the intended awardee to claim the DVBE incentive(s) will be verified by the State. If evidence of an alleged violation is found during the verification process, the State shall initiate an investigation, in accordance with the requirements of the PCC §10115, et seq., and MVC §999 et seq., and follow the investigatory procedures required by the 2 CCR §1896.80. Contractors found to be in violation of certain provisions may be subject to loss of certification, penalties and/or contract termination.

**Only State of California, Office of Small Business and DVBE Services (OSDS), certified DVBEs (hereafter called "DVBE")** who perform a commercially useful function relevant to this solicitation, may be used to qualify for a DVBE incentive(s). The criteria and definition for performing a commercially useful function are contained herein on the page entitled Resources & Information. Bidders are to verify each DVBE subcontractor's certification with OSDS to ensure DVBE eligibility.

At the State's option prior to award of the contract, a written confirmation from each DVBE subcontractor identified on the Bidder Declaration must be provided. As directed by the State, the written confirmation must be signed by the bidder and/or the DVBE subcontractor(s). The written confirmation may request information that includes but is not limited to the DVBE scope of work, work to be performed by the DVBE, term of intended subcontract with the DVBE, anticipated dates the DVBE will perform required work, rate and conditions of payment, and total amount to be paid to the DVBE. If further verification is necessary, the State will obtain additional information to verify compliance with the above requirements.

**THE DVBE BUSINESS UTILIZATION PLAN (BUP):** DVBE BUPs are a company's commitment to expend a minimum of 3% of its total statewide contract dollars with DVBEs -- this percentage is based on all of its contracts held in California, not just those with the State. A DVBE BUP does not qualify a firm for a DVBE incentive. Bidders with a BUP, must submit a Bidders Declaration (GSP D-05-105) to confirm the DVBE participation for an element of work on this solicitation order to claim a DVBE incentive(s).

#### **THE FOLLOWING MAY BE USED TO LOCATE DVBE SUPPLIERS:**

**Awarding Department:** Contact the department's contracting official named in this solicitation for any DVBE suppliers who may have identified themselves as potential subcontractors, and to obtain suggestions for search criteria to possibly identify DVBE suppliers for the solicitation. You may also contact the department's SB/DVBE Advocate for assistance.

#### **Other State and Federal Agencies, and Local Organizations:**

**STATE:** Access the list of all certified DVBEs by using the Department of General Services, Procurement Division (DGS-PD), online certified firm database at [www.eprocure.dgs.ca.gov](http://www.eprocure.dgs.ca.gov). To begin your search, click on "SB/DVBE Search." Search by "Keywords" or "United Nations Standard Products and Services Codes (UNSPSC) that apply to the elements of work you want to subcontract to a DVBE. Check for subcontractor ads that may be placed on the California State Contracts Register (CSCR) for this solicitation prior to the closing date. You may access the CSCR at: [www.eprocure.dgs.ca.gov](http://www.eprocure.dgs.ca.gov). For questions regarding the online certified firm database and the CSCR, please call the OSDS at (916) 375-4940 or send an email to: [OSDCHelp@dgs.ca.gov](mailto:OSDCHelp@dgs.ca.gov).

**FEDERAL:** Search the U.S. Small Business Administration's (SBA) Central Contractor Registration (CCR) on-line database at [www.ccr.gov](http://www.ccr.gov) to identify potential DVBEs and click on the "Dynamic Small Business Search" button. Search options and information are provided on the CCR Dynamic Small Business Search site. First time users should click on the "help" button for detailed instructions. Remember to verify each firm's status as a California certified DVBE.

**LOCAL:** Contact local DVBE organization to identify DVBEs. For list of local organizations, go to [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus) and select DVBE Local Contacts (New 02/09) (pdf).

ATTACHMENT

Solicitation Number

**RESOURCES AND INFORMATION**

For questions regarding bid documentation requirements, **contact the contracting official at the awarding department for this solicitation.** For a directory of SB/DVBE Advocates for each department go to: <http://www.pd.dgs.ca.gov/smbus/advocate.htm>.

The Department of General Services, Procurement Division (DGS-PD) publishes a list of trade and focus publications to assist bidders in locating DVBEs for a fee. To obtain this list, please go to [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus) and select:

- [DVBE Trade Paper Listing \(New 02/09\) \(pdf\)](#)
- [DVBE Focus Paper Listing \(New 02/09\) \(pdf\)](#)

**U.S.Small Business Administration (SBA):**  
Use the Central Contractor Registration (CCR) on-line database.  
*Internet contact only* -Database: [www.ccr.gov](http://www.ccr.gov)

**FOR:**  
Service-Disabled Veteran-owned businesses in California (Remember to verify each DVBE's California certification).

**Local Organizations:** Go to [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus) and select: [DVBE Local Contacts \(New 02/09\) \(pdf\)](#)

**FOR:**  
List of potential DVBE subcontractors

**DGS-PD EProcurement**  
Website: [www.eprocure.dgs.ca.gov](http://www.eprocure.dgs.ca.gov)  
Phone: (916) 375-2000  
Email: [eprocure@dgs.ca.gov](mailto:eprocure@dgs.ca.gov)

**FOR:**

- SB/DVBE Search
- CSCR Ads
- Click on Training tab to Access eProcurement Training Modules including: Small Business (SB) DVBE Search

**DGS-PD Office of Small Business and DVBE Services (OSDS)**  
707 Third Street, Room 1-400, West Sacramento, CA 95605  
Website: [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)  
OSDS Receptionist, 8 am - 5 pm: (916) 375-4940  
PD Receptionist, 8 am - 5 pm: (800) 559-5529  
Fax: (916) 375-4950  
Email: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)

**FOR:**

- Directory of California-Certified DVBEs
- Certification Applications
- Certification Information
- Certification Status, Concerns
- General DVBE Program Info.
- DVBE Business Utilization Plan
- Small Business/DVBE Advocates

**Commercially Useful Function Definition**

California Code of Regulations, Title 2, § 1896.61(l):

The term "DVBE contractor, subcontractor or supplier" means any person or entity that satisfies the ownership (or management) and control requirements of §1896.61(f); is certified in accordance with §1896.70; and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function.

As defined in MVC §999, a person or an entity is deemed to perform a "commercially useful function" if a person or entity does **all** of the following:

- Is responsible for the execution of a distinct element of the work of the contract.
- Carries out the obligation by actually performing, managing, or supervising the work involved.
- Performs work that is normal for its business services and functions.
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

## **CHAPTER 5: GENERAL CONTRACT PROVISION / PROCEDURAL INFORMATION**

### **5.00 Payment Provisions**

Every contract must state in what form, the frequency, and upon what basis money will exchange hands; in other words, a payment provision. Following are descriptions of possible methods of payment:

#### **A. Lump Sum Payments**

For lump sum payments, the exact amount to be paid upon completion of the contract is stated in the contract. After the satisfactory completion of the terms of the contract, payment is made to the contractor. Suggested payment language to use in contract:

*“    DAA agrees to pay (contractor) the sum of \$       upon satisfactory completion of the terms of this contract.”*

#### **B. Unit Rate Payments**

This is used when the exact amount of payment cannot be determined before work commences. In such cases, the payment provision must clearly state a rate of pay per unit, and include a “not to exceed” clause. Payment is made upon satisfactory completion of the work, based upon the actual final amount (rate x units), which must be no more than the “not to exceed clause.” Payment over the “not to exceed amount” cannot be made without a contract amendment. Suggested payment language to use in contract:

*“DAA agrees to pay (contractor) the sum of \$           per (unit) upon satisfactory completion of the terms of this contract. The total amount of this contract shall not exceed \$          ”.*

#### **C. Progress Payments**

Progress payments are partial payments made at clearly identifiable stages of progress, based upon written progress reports. It is recommended that progress payments only be made for contracts that are at least three months in duration, and that the progress payments are made not more frequently than monthly. The following rules apply to progress payments:

1. Progress payments may never be made in advance of services rendered.
2. Ten percent (10%) of amount due must be retained from each progress payment.
3. Upon satisfactory completion of all services, the total amount that has been withheld from each progress payment will be paid to the contractor.
4. If the contract is bid, then the bid document must state that progress payments will be made.

Suggested payment language to use in contract:

*“DAA agrees to pay (contractor) \$      . No payment shall be made in advance of services rendered. Progress payments will be made no more frequently than once a month. In computing the amount of any progress payment, the DAA shall determine what the contractor has earned during the period for which payment is being made, but shall retain out of such earnings an amount equal to at least 10% thereof, pending satisfactory completion of the entire contract.”*

## D. Advance Payments

A DAA may not make payments prior to work performed.

## 5.05 Contract Termination Clauses

### A. Standard Agreements

#### *Termination for Cause*

The General Terms and Conditions form GTC 307 that is Exhibit C for Standard Agreements contains Termination for Cause language. This language should not be changed or modified.

#### *Termination without Cause*

The pre-printed standard agreement contract forms do not contain a termination clause to allow the DAA to terminate the contract without cause. It is recommended that the DAA add termination clause language to their contract that allows the DAA to terminate the contract without cause, with advance written notice provided to the contractor. Suggested language:

*“The fair reserves the right to terminate any contract, at any time by giving the contractor notice in writing at least \_\_\_ days prior to the date when such termination shall become effective. Such termination shall relieve the fair of a further payment, obligations, and/or performances required in the terms of the contract.”*

It is not recommended that **mutual** termination without cause be included in the contract.

### B. Rental Agreements

Rental Agreements already contain pre-printed mutual termination without cause language. If a different termination clause is used, then the pre-printed clause must be deleted and the new language added to the contract. All of these changes must be initialed by both parties.

## 5.10 Multiple Year Contracts/Options to Renew

- If a contract is for more than one year (multi-year) or contains options to renew which if exercised would make the contract multi-year, a written justification explaining why it is in the best interest of the DAA must be included in the contract file, and in the contract package if the contract requires F&E approval. This justification may be added to the *Std. 215 Agreement Summary* or prepared on a separate sheet of paper.
- Normally, the overall term of a contract (including all options to renew) may not exceed five years. **If contract exceeds a five year term, pre-approval from F&E must be requested in writing and approved in writing by F&E prior to execution of the contract.** Contracts exceeding five years will only be approved under certain circumstances, such as major capital improvements to be made by the contractor etc.
- The contract dollar amount to be used to determine bid, approval, and other contract requirements is the total dollar amount including all years of a multi-year contract, as well as all option year amounts if contract has options to renew.
- For contracts with options to renew, the bid documents and resulting contract must contain information regarding the options to renew including who (DAA, or contractor and DAA) may exercise the option, how to exercise option (i.e. “in writing at least 30 days prior to the expiration date”), the number and length of options, and how the dollar amount for option years will be determined.
- When exercising an option to renew, the preferred method to use is a contract amendment.

## 5.15 Personal Services Considerations

Personal services contracts have come under close scrutiny of employee organizations, and consequently the State Personnel Board, in recent years. Following are instructions for identifying and justifying personal services contracts. DAA's may only enter into those personal services contracts that are permissible as described below. Note that personal services contracts are still subject to all bid requirements and other contracting requirements as stated in the Contract Manual.

### A. Definition

Title 2, California Administrative Code, Section 279.1 defines "personal services contract" as any contract (except public works contracts) under which labor or personal services are a significant, separately identifiable element.

### B. Use of Personal Services Contracts

The use of a personal services contract is permissible if the contract meets any of the criteria under Government Code 19130(b), listed in Part E below.

### C. Documentation/Justification

Typically, personal services contracts permissible under 19130(b) will fall under criteria 3 or 10 (listed below). The applicable 19130(b) criteria must be listed on the Std. 215, Contract Summary, Section 17. Per the California Code of Regulations, Title 2, 547.60 – 547.68, the fair must also provide a justification /explanation describing why the contract falls under those particular criteria, including any pertinent details. The information must be documented so that if an employee organization contacts the State Personnel Board regarding a contract, the facts upon which the DAA made the determination that the contract was permissible are readily available for review. Include this information on the Std. 215 or on a separate sheet of paper, and keep as part of the contract file.

### D. Approval

If the contract exceeds \$75,000.00, submit the contract package (including the justification described above) to F&E. F&E will forward the applicable parts of the package to Human Resources Branch (HRB) for their review and approval of the personal services aspect of the contract.

Personal services contracts \$75,000.00 or less, do not come to F&E for approval. However, the DAA should contact HRB to determine whether or not they want to review these contracts.

### E. 19130(b) Criteria

The following are the ten criteria under 19130(b), **any** of which make the contract permissible as far as personal service considerations are concerned:

1. The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.
2. The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

3. **The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system. Note: If DAA is uncertain whether or not there may be available civil service classifications for the work to be performed, contact Human Resources Branch for assistance.**
4. The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as “service agreements” shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.
5. The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protest against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.
6. The nature of the work is such that the Government Code standards for emergency appointments apply. These contracts shall conform with Article 8 (commencing with Section 19888) of Chapter 2.5 of Part 2.6.
7. State agencies need private counsel because a conflict of interest on the part of the Attorney General’s office prevents it from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.
8. The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.
9. The contractor will conduct training courses, for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment.
10. **The services are of such an urgent, temporary or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose. Personal Services Contracts Not Meeting 19130(b) Criteria**

**F. Personal Service Contracts Not Meeting 19130(b) Criteria**

A personal services contract that does not meet any of the 19130(b) criteria can only be entered to if it is approved by the State Personnel Board as a “cost-savings” contract. The stringent requirements of such a contract as well as the lengthy State Personnel Board approval process make these contracts not a viable option except in the most unusual circumstance.

## **CHAPTER 6: SPECIFIC TYPES OF CONTRACTS** **(INFORMATION, WORKSHEETS, SPECIAL FORMS)**

### **6.00 Carnival Contracts**

#### **A. Bidding Requirements**

Pre-review by F&E of carnival bidding packages prior to their release is required. Notifications and/or bid packages must be sent certified mail to all carnival operators on the CFSA Carnival Master Insurance List with insurance coverage for fairtime operation (see Item B below), and also to any other carnival operator who has requested notification/bid package.

#### ***DAA*s**

Although DAA carnival contracts are considered rental agreements, they must be bid. There are two types of bid packages for carnivals:

1. Two-Tier and
2. High Score Fill-in-the-Blank carnival RFP packages are located on the F&E Portal (see Part 1.00 of this manual for instructions to access the Portal).

#### ***County and Citrus Fruit Fairs***

County and Citrus Fruit Fairs must bid their carnival contracts. County and citrus fruit fairs may use our boilerplate carnival bid packages or use documentation provided by their county contracting officials. They must also follow the specific requirements set forth in the Food and Agricultural Code Section 4511:

4511 (a) All county fairs and citrus fruit fairs shall, prior to entering into a carnival contract, do both the following:

1. Notify all persons on the department's list of qualified carnival contractors of the contract opportunity at least 180 days prior to entering into the contract.
2. Provide all applicants for the carnival contract a hearing before the board or governing authority on their proposal.

(b) If a county fair or citrus fruit fair enters into a carnival contract with a person other than the highest bidder

© No county fair or citrus fruit fair shall enter into a carnival contract for a term which exceeds three years without the approval of the department.

#### **B. CFSA Carnival Master Insurance List**

CFSA maintains a Carnival Master Insurance List. This list is at the back of the Master Insurance packet that CFSA sends to the fairs. For county fairs this list is the department's list of qualified carnival contractors' as referenced in Food and Agricultural Code Section 4511(a) 1 shown in Section A above. Questions regarding carnival insurance requirements or a carnival operator's current insurance status should be directed to Lianne Lewellen at CFSA (916) 263-6145.

**C. “CARNIVAL” FAIRTIME CONTRACT WORKSHEET**  
**Rental Agreement**  
(Formal Bid Process Required)

Check off each item, as it is completed and/or added to the contract package.

- 1 - Std. 215, “Agreement Summary”** – Completed form.
- Include justification for multi-year contract, if applicable.
- CFSA Carnival Master Insurance List**  
Check to ensure carnival operator is on current CFSA Carnival Master Insurance List to ensure that the carnival operator still has all insurance coverage’s in place.
- 1 - Board Resolution or Delegation of Authority** (if multi-year, submit Board Resolution, and include total number of years, and total dollar amount).
- 3 – F-31 “Rental Agreement Forms”**
- Submit 3 completed signed copies of the F-31 with all applicable items completed as required.
- Authorized signatures of contractor and DAA CEO on each copy of F-31.
- If changing termination clause, add new clause and line out pre-printed clause on reverse of F-31. Both parties initial.
- Any changes made to documentation initialed by both parties.

**Attach and incorporate the following exhibits:**

- Standard Contract Terms and Conditions, SCTC (F-31) or using new F-31 with SCTC language included.
- CFSA Insurance Requirements Form.

**Bidding Documentation:**

- 1 – Copy of DAA’s RFP.
- 1 – Copy of certified mail receipts (for notices sent and/or RFP’s sent to carnival operators on pre-qualified list.
- 1 – Copy of each proposal received.
- 1 – Copy of all score sheets.
- Add the following statement to the contract:  
“The DAA’s bid package dated \_\_\_\_\_, and the contractor’s bid, dated \_\_\_\_\_, are on file at the DAA and at the Division of Fairs and Expositions’ Office in Sacramento, and are incorporated herein by reference and made a part of this contract.”



## 6.05 Contract Amendments

An amendment is a formal modification to a contract.

### A. Format and Approval

- Amendments for Standard Agreements are prepared using the Std. 213A.
- Amendments for Rental Agreements are typed on letterhead.
- Number the amendment by using the original contract # followed by "AM #1". Use this sequence for each succeeding amendment.
- A Std. 215 is required for all Std. 213A amendments, and for Rental Agreement amendments that require F&E approval.
- An amendment may not be used to circumvent the competitive bidding process; however, in the case of a protested contract award, the existing contract may be amended to extend the expiration date until the protest is over.
- Amendments for contracts that originally required F&E approval need F&E approval.
- If the original contract did not need approval from F&E, but the amendment increases the dollar amount of the contract over \$75,000 then the entire original contract package must be submitted to F&E for approval, along with the amendment(s) for approval.

### B. Amendment Language

- The amendment should contain the same degree of specificity for changes that the original contract contained for the same item.
- The items of work covered by the amendment should be clearly written as part of the contract. Example: "Scope of work Exhibit X is hereby amended to include additional items of work as shown on Exhibit X1".
- Paragraphs being amended should be clearly identified. Example: "Paragraph X is hereby amended to read: The total amount of this contract is . . ."
- Make sure the terms and conditions of the amendment are approved by the DAA board.
- The amendment must include the following statement:  
**"Except as herein amended, all other terms and conditions remain as previously agreed upon."**
- A Std. 215 Agreement Summary must be completed for all amendments.
- The effective date language of the amendment should be specified without affecting the contract period. An example of correct language is: "The effective date of this amendment is . . ." **Do not** use such wording as, "This contract is effective from (amendment date) to ending date." Such terminology has the legal effect of moving the starting date of the entire contract up to the amendment date.
- The amendment must be signed by both parties.

**C. CONTRACT AMENDMENT WORKSHEET**

Check off each item, as it is completed and/or added to the contract package. See preceding Contract Manual page for details for the items listed.

- 1 - Std. 215, "Agreement Summary"** – Completed form
- 1 - Board Resolution or Delegation of Authority**
- Contract Form**
  - 3 – Std. 213A Amendment forms**, if amending a Standard Agreement
- or**
  - 3 – Letterhead document for Rental Agreement Amendment**
  - Amendment correctly numbered
  - Detailed description of changes
  - Correct amendment effective date language (see previous page)
  - Following language included in the amendment ""Except as herein amended, all other terms and conditions remain as previously agreed upon."
- Copy of original approved contract and any previous amendments

**Note:** If the original contract did not need approval from F&E, but the amendment increases the dollar amount of the contract over \$75,000 then the entire original contract package must be submitted to F&E for approval, along with the amendment(s) for approval.

## 6.10 Entertainment Contracts – Stage Acts

### A. Bidding Requirements

Contracts for the actual entertainment are exempt from bidding requirements. **Contracts for entertainment coordinators to obtain entertainment for the fair are not exempt.** Entertainment coordination is a service and subject to the same bidding requirements as any contract for services (see Part 3 of this Manual).

### B. Entertainment Contract Attachment

The Entertainment Contract Attachment must be attached and incorporated into all of the entertainment contracts. A copy of this form is on the following page of this manual. It covers the following two items:

1. Copyright Infringement Indemnification Language – required for all entertainment contracts.
2. Talent Agency License Certification
  - a. This language must be included in the contract even if the contractor does not believe that it applies. That is why the certification says “applicable requirements”, meaning that only applicable sections apply to the contractor/ contract. Labor Code Sections §271, §272. and §1700.5 are printed at the end of the Entertainment “Stage Acts” section for the contractor’s information, if requested.. The contractor may access Labor Code Sections §1700.5. At [www.leginfo.ca.gov](http://www.leginfo.ca.gov), click on California Law, Labor Code.

**271.** *No person, or agent or officer thereof, engaged in the business of promoting a theatrical enterprise where living individuals are used or employed in the presentation, except persons having a free and unencumbered title to the fee of the property on which the theatrical enterprise is produced, shall fail or neglect, before producing such enterprise in any period for which a single payment of wages is made, to have on hand or on deposit with a bank or trust company, in the county in which such enterprise is to be produced, or if there is no bank or trust company in the county, then in the bank or trust company nearest the place where such enterprise is produced, cash or readily salable securities of a market value sufficient to pay the wages of every individual used or employed in the production of such enterprise, or in connection therewith for such period. The provisions of this section shall not apply to the use or employment of individuals by a radio or television broadcasting enterprise; provided, there is on hand or on deposit with a bank or trust company in this State cash or readily salable securities of a market value sufficient to pay the wages of every individual used or employed in such enterprise, or in connection therewith. Theatrical enterprise as used in this section means the production of any circus vaudeville, carnival, revues, variety shows, musical comedies, operettas, opera, drama, theatrical, endurance contest, walkathon, marathon, derby, or other entertainments, exhibitions, or performances. Any person, or agent or officer thereof, who violates this section, is guilty of a misdemeanor.*

**272.** *Every person, agent, or officer thereof engaged in the businesses specified in Section 270, 270.5, 270.6, or 271, shall keep conspicuously posted upon the premises where persons are employed, a notice specifying the name and address of the bank or trust company where the required cash or readily salable securities are on deposit, or the name of the surety or sureties on the bond deposited pursuant to Section 270.5 or 270.6. Failure to keep the notice conspicuously posted is prima facie evidence of a violation of Section 270, 270.5, 270.6, or 271. **1700.5.** No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefore from the Labor Commissioner. The license shall be posted in a conspicuous place in the office of the licensee. The license number shall be referred to in any advertisement for the purpose of the solicitation of talent for the talent agency. Licenses issued for talent agencies prior to the effective date of this chapter shall not be invalidated thereby, but renewals of those licenses shall be obtained in the manner prescribed by this chapter.*

## ENTERTAINMENT CONTRACT ATTACHMENT

### ***Copyright Infringement Indemnification***

*Contractor warrants and represents that no musical, literary or artistic work or other property protected by copyright will be performed reproduced or used in the performance of this contract unless contractor has previously thereto obtained written permission from the copyright holder. Contractor acknowledges that contractor acts under this contract as an independent contractor charged with the responsibility at their sole discretion, for selection, performance, reproduction and use of such musical, literary and artistic works a contractor deems appropriate and that contractor undertakes strict compliance with all laws respecting copyrights and the performance, reproduction and use of musical, literary and artistic works. Contractor warrants that in the performance of this contract, contractor will not infringe any statutory, common law or other right of any person by performing, reproducing or otherwise making use of any work or material. Contractor will indemnify, save and hold harmless the State and its agencies, including contracting district agricultural association, and their officers, agents, employee and servants from and against all claims, costs, and expenses (including legal fees), demands, actions and liability of every kind and character whatsoever with respect to copyright and the performance, reproduction and use of musical, literary and artistic works. Contractor authorizes the withholding of payment under this contract pending the final disposition of any claim which may result from the foregoing indemnification.*

### ***Talent Agency License Certification***

“Contractor certifies compliance with applicable requirements in the talent agency sections of the Labor Code (§271 and §272 and §1700.5 et seq.)”

## 6.15 Entertainment “Stage Acts” Contract Worksheet

This Worksheet does not apply to contracts for entertainment coordinator services. Entertainment coordinator contracts are subject to bid requirements.

Check off each item, as it is completed and/or added to the contract package.

- 1 - Std. 215 “Agreement Summary”** – Completed form.
- 1 - Evidence of Insurance** – If applicable - insurance certificate or page showing CFSA master certificate approval.
- 1 - Contractor Certification Clauses Form** – Completed and signed by contractor.
- 1- Board Resolution or Delegation of Authority**
- 3 - Std. 213 “Standard Agreement” Forms**
- Submit 3 completed signed copies of the Std. 213 with all applicable items completed as required.
- Completed Exhibit A Scope of Work (on Std. 213 itself or attached to each copy).
- Completed Exhibit B Budget Detail and Payment Provisions (on Std. 213 or attached to each copy).
- Authorized signatures of contractor and DAA CEO on each copy of Std. 213.
- Termination Without Cause language added if applicable.
- Any changes made to documentation initialed by both parties.

**Attach and incorporate the following exhibits into the contracts:**

- CFSA Insurance Requirements form if applicable.
- Entertainment Contract Attachment.

**Note:** If contract is over \$5,000, a “Contract Award Report”, Std. 16 form, must be sent to the Department of Fair Employment and House, 2014 “T” Street, Suite 210, Sacramento, CA 95814.

## 6.20 “Generic” Services Contract Worksheet

Check off each item, as it is completed and/or added to the contract package.

- 1 - Std. 215, “Agreement Summary”** – Completed form. Include justification for multi-year contract, if applicable.
- 1 - Evidence of Insurance** - Insurance certificate or page showing CFSA master cert approval.
- 1 - Contractor Certification Clauses Form** – Completed and signed by contractor.
- 1-Board Resolution or Delegation of Authority** - (if multi-year, submit Board Resolution, and include total number of years, and total dollar amount)
- 3 - Std. 213 “Standard Agreement” Forms** - Submit 3 completed signed copies of the Std. 213 with all applicable items completed as required.
- Completed Exhibit A Scope of Work (on Std. 213 itself or attached to each copy).
- Completed Exhibit B Budget Detail and Payment Provisions (on Std. 213 or attached to each copy).
- Authorized signatures of contractor and DAA CEO on each copy of Std. 213.
- Termination without Cause language added if applicable.
- Any changes made to documentation initialed by both parties.

### **Bid Process Used**

***Check applicable box and then complete sections in appropriate box below.***

- IFB
- RFP
- Alternative Bid Process

### **IFB or RFP Bidding Documentation:**

- 1 – Copy of DAA’s RFP or IFB
- 1 – Copy of list to whom bid packages were sent
- 1 – Copy of each bid received
- 1 – Copy of all score sheets, if RFP
- Evidence of Advertising in CSCR
  - Covered by Fairs & Expositions’ CSCR Blanket Ad for fairtime.
  - CSCR ad placed by DAA for year-round or time in addition to fairtime (attach copy).

- Following statement added to contract:  
“The DAA’s bid package dated \_\_\_\_\_, and the contractor’s bid, dated \_\_\_\_\_, are on file at the DAA and at the Division of Fairs and Expositions’ Office in Sacramento, and are incorporated herein by reference and made a part of this contract.”

**DVBE Documentation**

- Waived
- Applicable
- Comply with 3% program requirement – All required documentation must be included.
- Bidder and Subcontractor Performance Declaration (GSPD-05-105)
  - Disabled Veteran Business Enterprise (DVBE) Declaration (Std. 843)
- Incentive Applied
- Bidder and Subcontractor Performance Declaration (GSPD-05-105)
  - Disabled Veteran Business Enterprise (DVBE) Declaration (Std. 843)

**Alternative Bid Process Documentation**

- Copy of written quotes received
- Verification of each businesses small business or DVBE status: Either copies of the small business or DVBE certifications or printouts of pages from DGS website displaying firms’ current certification status.

**Attach to the contracts and incorporate the following exhibits:**

- CFSA Insurance Requirements form

**Note:** If contract is over \$5,000, a “Contract Award Report”, Std. 16 form, must be sent to the Department of Fair Employment and House, 2014 “T” Street, Suite 210, Sacramento, CA 95814.

## 6.25 Gun Show Contracts

Whether or not a fair rents out their facilities for gun shows is a policy decision to be made by the fair board and their community. DAA gun show contracts that are within the delegated contract approval amount do not require F&E review or approval.

Effective January 1, 2000 AB 295 amended Penal Code Sections 171b and 12071.1, and added Section 12071.4 to the Penal Code. This law applies to **all** gun shows in California. It imposes additional requirements and authorizes a program of law enforcement administered by the Department of Justice. A copy of the aforementioned Penal Code sections is attached. All fairs that choose to rent out their facilities for gun shows should study these sections to inform themselves as to how gun shows must operate under the new law. These sections include responsibilities of both the facility manager (fair) and the promoter/contractor. Any questions regarding these Penal Code Sections and their impact on gun shows and gun show contracts or the responsibilities of the fair or promoter/contractor should be directed to your assigned Attorney General's Office attorney.

### Penal Code

171b. (a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:

- (1) Any firearm.
  - (2) Any deadly weapon described in Section 653k or 12020.
  - (3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.
  - (4) Any unauthorized tear gas weapon.
  - (5) Any taser or stun gun, as defined in Section 244.5.
  - (6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO2 pressure, or spring action, or any spot marker gun or paint gun.
- (b) Subdivision (a) shall not apply to, or affect, any of the following:
- (1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.
  - (2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.  
(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if he or she is a party to an action pending before the court.
  - (3) A person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.
  - (4) A person who has permission to possess that weapon granted in writing by a duly authorized official who is in charge of the security of the state or local government building.
  - (5) A person who lawfully resides in, lawfully owns, or is in lawful possession of, that building with respect to those portions of the building that are not owned or leased by the state or local government.
  - (6) A person licensed or registered in accordance with, and acting within the course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code who has been hired by the owner or manager of the building if the person has permission pursuant to paragraph (5).
  - (7) (A) A person who, for the purpose of sale or trade, brings any weapon that may otherwise be lawfully transferred, into a gun show conducted pursuant to Sections 12071.1 and 12071.4.  
(B) A person who, for purposes of an authorized public exhibition, brings any weapon that may otherwise be lawfully possessed, into a gun show conducted pursuant to Sections 12071.1 and 12071.4.
- (c) As used in this section, "state or local public building" means a building that meets all of the following criteria:
- (1) It is a building or part of a building owned or leased by the state or local government, if state or local public employees are regularly present for the purposes of performing their official duties. A state or local public building includes, but is not limited to, a building that contains a courtroom.



(2) It is not a building or facility, or a part thereof, that is referred to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the Elections Code.

(3) It is a building not regularly used, and not intended to be used, by state or local employees as a place of residence.

12071.1. (a) No person shall produce, promote, sponsor, operate, or otherwise organize a gun show or event, as specified in subparagraph

(B) of paragraph (1) of subdivision (b) of Section 12071, unless that person possesses a valid certificate of eligibility from the Department of Justice. Unless the department's records indicate that the applicant is a person prohibited from possessing firearms, a certificate of eligibility shall be issued by the Department of Justice to an applicant provided the applicant does all of the following:

(1) Certifies that he or she is familiar with the provisions of this section and Section 12071.4.

(2) Ensures that liability insurance is in effect for the duration of an event or show in an amount of not less than one million dollars (\$1,000,000).

(3) Provides an annual list of the gun shows or events that the applicant plans to promote, produce, sponsor, operate, or otherwise organize during the year for which the certificate of eligibility is issued, including the date, time, and location of the gun shows or events.

(b) If during that year the information required by paragraph (3) of subdivision (a) changes, or additional gun shows or events will be promoted, produced, sponsored, operated, or otherwise organized by the applicant, the producer shall notify the Department of Justice no later than 30 days prior to the gun show or event.

(c) As used in this section, a "licensed gun show producer" means a person who has been issued a certificate of eligibility by the Department of Justice pursuant to subdivision (a). No regulations shall be required to implement this subdivision.

(d) The Department of Justice shall adopt regulations to administer the certificate of eligibility program under this section and shall recover the full costs of administering the program by fees assessed applicants who apply for certificates. A licensed gun show producer shall be assessed an annual fee of eighty-five dollars (\$85) by the department.

(e) (1) A willful failure by a gun show producer to comply with any of the requirements of this section, except for the posting of required signs, shall be a misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000), and shall render the producer ineligible for a gun show producer license for one year from the date of the conviction.

(2) The willful failure of a gun show producer to post signs as required by this section shall be a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) for the first offense and not to exceed two thousand dollars (\$2,000) for the second or subsequent offense, and with respect to the second or subsequent offense, shall render the producer ineligible for a gun show producer license for one year from the date of the conviction.

(3) Multiple violations charged pursuant to paragraph (1) arising from more than one gun show or event shall be grounds for suspension of a producer's certificate of eligibility pending adjudication of the violations.

(f) Prior to the commencement of a gun show or event, the producer thereof shall, upon written request, within 48 hours, or a later time specified by the requesting law enforcement agency, make available to the requesting law enforcement agency with jurisdiction over the facility, a complete and accurate list of all persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms.

The producer shall thereafter, upon written request, for every day the gun show or event operates, within 24 hours, or a later time specified by the requesting law enforcement agency, make available to the requesting law enforcement agency with jurisdiction over the facility, an accurate, complete, and current list of the persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms.

This subdivision applies to persons, entities, and organizations whether or not they participate in the entire gun show or event, or only a portion thereof.

(g) The information that may be requested by the law enforcement agency with jurisdiction over the facility, and that shall be provided by the producer upon request, may include, but is not limited to, the following information relative to a vendor who offers for sale firearms manufactured after December 31, 1898: his or her complete name, and a driver's license or identification card number.

(h) The producer and facility manager shall prepare an annual event and security plan and schedule that shall include, at a minimum, the following:

(1) The type of shows or events including, but not limited to, antique or general firearms.

(2) The estimated number of vendors offering firearms for sale or display.

(3) The estimated number of attendees.

(4) The number of entrances and exits at the gun show or event site.

(5) The location, dates, and times of the shows or events.

(6) The contact person and telephone number for both the producer and the facility.

(7) The number of sworn peace officers employed by the producer or the facilities manager who will be present at the show or event.

(8) The number of non-sworn security personnel employed by the producer or the facility's manager who will be present at the show or event.

(i) The annual event and security plan shall be submitted by either the producer or the facility's manager to the Department of Justice and the law enforcement agency with jurisdiction over the facility. Not later than 15 days prior to the commencement of the gun show or event, the producer shall submit to the department, the law enforcement agency with jurisdiction over the facility site, and the facility's manager a revised event and security plan if significant changes have been made since the annual plan was submitted, including a revised list of vendors that the producer knows, or reasonably should know, will be renting tables, space, or otherwise participating in the gun show or event. The event and

security plan shall be approved by the facility's manager prior to the event or show after consultation with the law enforcement agency with jurisdiction over the facility. No gun show or event shall commence unless the requirements of this subdivision are met.

(j) The producer shall be responsible for informing prospective 12071.4 that apply to vendors.

(k) The producer shall, within seven calendar days of the commencement of the show or event, but not later than noon on Friday for a show or event held on a weekend, submit a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice for the purpose of determining whether these prospective vendors and designated firearms transfer agents possess valid licenses and are thus eligible to participate as licensed dealers at the show or event. The department shall examine its records and if it determines that a dealer's license is not valid, it shall notify the show or event producer of that fact prior to the commencement of the show or event.

(l) If a licensed firearms dealer fails to cooperate with a producer or fails to comply with the applicable requirements of this section or Section 12071.4, that person shall not be allowed to participate in that show or event.

(m) If a producer fails to comply with subdivision (j) or (k), the gun show or event shall not commence until those requirements are met.

(n) All producers shall have written contracts with all gun show vendors selling firearms at the show or event.

(o) The producer shall require that signs be posted in a readily visible location at each public entrance to the show containing, but not limited to, the following notices:

(1) This gun show follows all federal, state, and local firearms and weapons laws without exception.

(2) All firearms carried onto the premises by members of the public will be checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and an identification tag or sticker will be attached to the firearm prior to the person being allowed admittance to the show.

(3) No member of the public under the age of 18 years shall be admitted to the show unless accompanied by a parent, grandparent, or legal guardian.

(4) All firearms transfers between private parties at the show shall be conducted through a licensed dealer in accordance with applicable state and federal laws.

(5) Persons possessing firearms on this facility must have in their immediate possession government-issued photo identification, and display it upon request to any security officer or any peace officer, as defined in Section 830.

(p) The show producer shall post, in a readily visible location at each entrance to the parking lot at the show, signage that states: "The transfer of firearms on the parking lot of this facility is a crime."

(q) It is the intent of the Legislature that the certificate of eligibility program established pursuant to this section be incorporated into the certificate of eligibility program established pursuant to Section 12071 to the maximum extent practicable.

12071.4. (a) This section shall be known, and may be cited as, the **Gun Show Enforcement and Security Act of 2000**.

(b) All gun show or event vendors shall certify in writing to the producer that they:

(1) Will not display, possess, or offer for sale any firearms, knives, or weapons for which possession or sale is prohibited.

(2) Acknowledge that they are responsible for knowing and complying with all applicable federal, state and local laws dealing with the possession and transfer of firearms.

(3) Will not engage in activities that incite or encourage hate crimes.

(4) Will process all transfers of firearms through licensed firearms dealers as required by state law.

(5) Will verify that all firearms in their possession at the show or event will be unloaded, and that the firearms will be secured in a manner that prevents them from being operated except for brief periods when the mechanical condition of a firearm is being demonstrated to a prospective buyer.

(6) Have complied with the requirements of subdivision (e).

(7) Will not display or possess black powder, or offer it for sale.

(c) All firearms transfers at the gun show or event shall be in accordance with applicable state and federal laws.

(d) Except for purposes of showing ammunition to a prospective buyer, ammunition at a gun show or event may be displayed only in closed original factory boxes or other closed containers.

(e) Prior to the commencement of a gun show or event, each vendor shall provide to the producer all of the following information relative to the vendor, the vendor's employees, and other persons, compensated or not, who will be working or otherwise providing services to the public at the vendor's display space if firearms manufactured after December 31, 1998, will be offered for sale:

(1) His or her complete name.

(2) His or her driver's license or state-issued identification card number.

(3) His or her date of birth. The producer shall keep the information at the show's or event's onsite headquarters for the duration of the show or event, and at the producer's regular place of business for two weeks after the conclusion of the show or event, and shall make the information available upon request any sworn peace officer for purposes of the officer's official law enforcement duties.

(f) Vendors and employees of vendors shall wear nametags indicating first and last name.

(g) No person at a gun show or event, other than security personnel or sworn peace officers, shall possess at the same time both a firearm and ammunition that is designed to be fired in the firearm. Vendors having those items at the show for sale or exhibition are exempt from this prohibition.

(h) No member of the public who is under the age of 18 years shall be admitted to, or be permitted to remain at, a gun show or event unless accompanied by a parent or legal guardian. Any member of the public who is under the age of 18 shall be accompanied by his or her parent, grandparent, or legal guardian while at the show or event.

(i) Persons other than show or event security personnel, sworn peace officers, or vendors, who bring firearms onto the gun show or event premises shall sign in ink the tag or sticker that is attached to the firearm prior to being allowed

admittance to the show or event, as provided for in subdivision (j).

(j) All firearms carried onto the premises of a gun show or event by members of the public shall be checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and an identification tag or sticker shall be attached to the firearm, prior to the person being allowed admittance to the show. The identification tag or sticker shall state that all firearms transfers between private parties at the show or event shall be conducted through a licensed dealer in accordance with applicable state and federal laws. The person possessing the firearm shall complete the following information on the tag before it is attached to the firearm:

(1) The gun owner's signature.

(2) The gun owner's printed name.

(3) The identification number from the gun owner's government-issued photo identification.

(k) All persons possessing firearms at the gun show or event shall have in his or her immediate possession, government issued photo identification, and display it upon request, to any security officer, or any peace officer.

(l) Unless otherwise specified, a first violation of this section is an infraction. Any second or subsequent violation is a misdemeanor. Any person who commits an act which he or she knows to be a violation of this section is guilty of a misdemeanor for a first offense.

## 6.30 Motorized Racing Contracts

Formal regulations for Motorized Racing Contracts at District Agricultural Associations became effective on 8/22/02, and establish requirements for District Agricultural Association boards to:

- Set curfew times and maximum decibel noise limits for their motorized racing activities; and
- Establish penalty measures for a contractor who fails to comply with these restrictions.

A copy of the regulation language is on the next page of this Manual.

### A. Instructions for District Agricultural Associations

Based upon these regulations, following are the procedures that District Agricultural Associations with motorized racing (which for the purposes of these regulations means oval track racing of motorized vehicles), must follow prior to entering into any new motorized racing contracts:

***The Board must set local policy to:***

1. Establish curfew time(s) for all types of motorized racing activities at the District Agricultural Association;
2. Establish maximum decibel noise limits per vehicle and procedures for monitoring decibel noise levels for all types of motorized racing activities at the District Agricultural Association;
3. Establish penalty measures for a contractor who fails to comply with these limit requirements; and
4. Develop any other contract terms or conditions that the board deems to be in the best interest of the District Agricultural Association when entering into a motorized racing contract.

***A motorized racing contract must contain:***

A copy of the terms, conditions, and penalty measures established by the Board, attached and incorporated into the contract.

### B. Motorized Racing Contracts at County or Citrus Fruit Fairs

While F&E does not draft regulations governing county and citrus fruit fairs, it is recommended that these fair boards work with their county governments to prepare requirements in the areas of motorized racing.

District Agricultural Associations should contact their legal counsel at the Attorney General's Office with any legal questions that they have regarding establishing their motorized racing policies.

### C. CEQA and Other Requirements

Note that these regulations and procedures do not cover any California Environmental Quality Act (CEQA) or related requirements that may also affect a District Agricultural Association's motorized racing program. Questions regarding CEQA requirements may be directed to California Construction Authority (CCA) at (916) 263-6100 or your fair's Legal Counsel.

**TITLE 3, FOOD AND AGRICULTURE**  
**Division 7-Fairs and Expositions**  
Chapter 2-Revenue Generating Contracts  
Article 2-Motorized Racing Contracts

**§7015** Requirements for Motorized Racing Contracts at District Agricultural Associations

- (a) For the purposes of Article 2 of these regulations, the following terms shall have the meanings described below:
- (1) "Association" means District Agricultural Association.
  - (2) "Motorized racing" means oval track racing of motorized vehicles.
- (b) Prior to entering into any motorized racing contracts, an Association Board shall:
- (1) Establish curfew time(s) for all types of motorized racing activities at the Association;
  - (2) Establish maximum decibel noise limits per vehicle and procedures for monitoring decibel noise levels for all types of motorized racing activities at the Association;
  - (3) Establish penalty measures for a contractor who fails to comply with these limit requirements; and
  - (4) Develop any other contract terms or conditions that the board deems to be in the best interest of the Association when entering into a motorized racing contract.
- (c) The terms, conditions, and penalty measures set forth in §7015 (b) shall be included as part of any Association motorized racing contract.

**NOTE:** Authority cited: Food and Agricultural Code §407.

Reference: Food and Agricultural Code §3965.1, §3965(d), and §4051(a).

## 6.35 Security Contract with Public Entity Worksheet

(City, County)

*Check off each item, as it is completed and/or added to the contract package.*

- 1 - Std. 215, "Agreement Summary"** – Completed form. Include justification for multi-year contract, if applicable.
- 1 - Evidence of Insurance** - Insurance certificate or document from the public entity certifying self-insurance coverage.
- 1-Board Resolution or Delegation of Authority** - (if multi-year, submit Board Resolution, and include total number of years, and total dollar amount).
- 1-Board Resolution From the Public Entity**
- 3 - Std. 213 "Standard Agreement" Forms** - Submit 3 completed signed copies of the Std. 213 with all applicable items completed as required.
- Completed Exhibit A Scope of Work (on Std. 213 itself or attached to each copy).
  - Copy of security work schedule if available
- Completed Exhibit B Budget Detail and Payment Provisions (on Std. 213 or attached to each copy).
  - Unless contract is for a pre-set total dollar amount, payment provisions should include hourly rates, and a not-to-exceed clause that will cover the highest anticipated amount. (If the actual final contract amount goes over the not-to-exceed amount, an amendment to the contract is required).
- Authorized signatures of contractor and DAA CEO on each copy of Std. 213.
- Termination language added/changed if applicable.
- Any changes made to documentation initialed by both parties.

## **6.40 Rental Agreement Year Round/Long Term**

If a rental agreement (contract) exceeds a five year term, pre-approval from F&E must be requested in writing and approved in writing by F&E prior to execution of the contract. Such contract exceeding five years will only be approved under certain circumstances, such as major capital improvements to be made by the contractor etc.

There is not a legal requirement for rental agreement contracts (except for carnival contracts) to be bid. However, it is often in the best interest of the DAA to do so. DAAs are therefore strongly encouraged to bid. If a DAA does elect to use the bid process for such a contract opportunity, all normally required bidding procedures must be followed (see Chapter 2 of this manual).

**A. Rental Agreement (Year Round/Long Term) Worksheet  
Rental Agreement**

**Check off each item, as it is completed and/or added to the contract package.**

- 1 - Std. 215, "Agreement Summary"** – Completed form Include justification for multi-year contract, if applicable. If the term exceeds five years, attach copy of DAA's request and F&E's approval of the term of the contract.
- Evidence of Insurance** - Insurance certificate or page showing CFSA master cert approval.
- 1 - Board Resolution or Delegation of Authority**  
(if multi-year, submit Board Resolution, and include total number of years, and total dollar amount).
- 3 – F-31 "Rental Agreement Forms"**
- Submit 3 completed signed copies of the F-31 with all applicable items completed as required.
- Authorized signatures of contractor and DAA CEO on each copy of F-31.
- If changing termination clause, add new clause and line out pre-printed clause on reverse of F-31. Both parties initial.
- Any changes made to documentation initialed by both parties.

**Attach and incorporate the following exhibits:**

- Standard Contract Terms and Conditions, SCTC (F-31) or using new F-31 with SCTC added.
- CFSA Insurance Requirements Form

**Bidding Documentation (If applicable):**

- 1 – Copy of DAA's RFP.
- 1 – Copy of to whom notification and/or bid package sent.
- 1 – Copy of each proposal received.
- 1 – Copy of all score sheets.
- Add the following statement to the contract:  
"The DAA's bid package dated \_\_\_\_\_, and the contractor's bid, dated \_\_\_\_\_, are on file at the DAA and at the Division of Fairs and Expositions' Office in Sacramento, and are incorporated herein by reference and made a part of this contract."



## 6.45 Sponsorship Contracts

Food and Agricultural Code section 4051.1 authorizes District Agricultural Associations (DAAs) to enter into sponsorship agreements as well as to enter into agreements with entities or individuals to develop, solicit, sell, and service these agreements. The section also delegates authority to the DAA's to establish "procedures" for entering into these agreements.

### A. General Sponsorship Contract Process for DAAs

With the exception of the contracts noted in Food and Agricultural Code section 4051.1 (b) as described later on this page, the following process applies:

- DAA Boards establish "procedures" for entering into sponsorship agreements.
- Each DAA's procedures for securing sponsorships and sponsorships coordinators must be approved by their Board and maintained on file at the DAA's Contract Office.
- The DAA then follows the sponsorship procedures set by their Board.
- **These procedures for sponsorship contracting, as well as the contracts themselves, are not subject to Contract Manual requirements or Division of Fairs and Expositions' approval. They are subject to the procedures established by the DAA.**

### B. Proposed Sponsorships Subject to Food and Ag Code 4051.1(b)

This section applies to proposed sponsorship contracts that:

- Exceed \$100,000.00 in value, or
- Have a term of over two years, or
- Contemplate the building of a permanent structure on fair property.

Food and Agricultural Code section 4051.1 has been amended to add part (b), which reads:

*"Written notification to the department shall be required prior to creating an entity for the activities described in this section and prior to entering into any agreement for activities described in this section if the agreement exceeds one hundred thousand dollars (\$100,000) in value, exists for a period of greater than two years, or contemplates the building of a permanent structure on fair property. The department may, upon reasonable notice, examine the books and records of any entity created pursuant to this section."*

Following is the new procedure that DAAs must follow effective January 1, 2003 prior to entering into a sponsorship agreement if it meets any of the three criteria listed above.

1. Prepare a brief description in memo form of the proposed sponsorship contract, including the value, term, any permanent structures that may be built as a result of the sponsorship, and why it is in the best interest of the DAA and the State.
2. Send the memo via e-mail, mail, or fax to:

#### **Division of Fairs and Expositions**

Attn: Contracts Manager  
1010 Hurley Way, Suite 200  
Sacramento, CA 95825  
Phone: (916) 263-2961  
Fax: (916) 263-2969  
Email: [dhillis@cdfa.ca.gov](mailto:dhillis@cdfa.ca.gov)

3. F&E will review the proposed sponsorship to determine whether or not it appears to be in the best interest of the DAA and the State.
4. The Division will then share with the DAA for the DAA's consideration any comments or concerns that they may have. We will also notify the DAA in writing that our review has been completed, even if there are no comments or concerns.
5. The DAA must wait until notification of the Division's review is received prior to entering into the contract.

**C. Sponsorships with Alcoholic Beverage Companies**

DAAAs should contact the Department of Alcoholic Beverage Control for guidance prior to considering any potential sponsorship contracts with alcoholic beverage companies. These contracts must not have any direct or indirect connection to contracts for actual sales of alcoholic beverages due to beverage pricing issues.

## 6.50 Vendor Contracts – Multi Year

Fairtime vendor (concession or commercial exhibit) contracts at DAAs may be for any period from one year (one fair season) up to five years (including five fair seasons). Regulations regarding vendor contracts were formally adopted in the California Code of Regulations and operative effective January 19, 2002. A copy of the regulations is on the next page of the Manual.

Please remember that in no way is a DAA obligated to award a vendor contract for more than one year. Nor, is a DAA obligated to award contracts to every vendor for the same duration. This will allow fairs to strengthen their strategic partnerships with the concession and commercial exhibitors who are an integral part of the fair experience.

Please review the following information and requirements resulting from the regulations for multi-year vendor contracts, to ensure that the board responsibilities, contract requirements and procedures outlined in these regulations are followed:

### A. Definitions

- The definitions of the terms annual fair, calendar year, association, secondary fair event, and vendor as used in these regulations are contained in part (a) of the regulations. These should be reviewed prior to studying the contract and association board requirements that follow.

### B. The Contract

- Vendor contracts at association fairgrounds for annual fairs and/or secondary fair events may be for a term of any period up to five calendar years.
- Vendor contracts prepared for a term of more than one calendar year shall be written for an initial one year term, and shall contain language indicating the following:
  - The contract will automatically be renewed annually up to the total term of the contract upon agreement of the vendor and satisfactory performance evaluation by the Association.
    - The Association reserves the right to adjust the financial terms, concession/exhibit location, and any other terms and conditions each year upon renewal of the contract.
    - The Association reserves the right to not renew the contract if legislative budget changes occur.

### C. The Association Board

- Prior to entering into a vendor contract that exceeds one year, an Association board shall:
  - Establish performance measures for annual performance evaluation of vendors whose contract exceeds one year.
  - Develop termination clause language to be included in vendor contracts that exceed one year.
  - Develop any other contract terms or conditions that the board deems to be in the best interest of the Association when entering into vendor contracts that exceed one year.

**TITLE 3, FOOD AND AGRICULTURE**  
Division 7 Fairs and Expositions  
Chapter 2-Revenue Generating Contracts  
Article 1-Vendor Contracts

**§7010** Requirements for Vendor Contracts at District Agricultural Associations for Annual Fairs and Secondary Fair Events

- a. For the purposes of Article 1 of these regulations, the following terms shall have the meanings described below:
- (1) Annual Fair is the primary annual fair event held at a District.
  - (2) Calendar Year means one year from the start date. For example, two Calendar Years starting June 5, 2001 would end June 4, 2003. The two Calendar Years would therefore include two Annual Fairs, even though 2001, 2002, and 2003 are included in the term.
  - (3) District means District Agricultural Association.
  - (4) Secondary Fair Event is an annual fair event produced by a District, other than the District's regular annual fair. Examples include, but are not limited to, a holiday fair or spring fair.
  - (5) Vendor means a concessionaire (food, beverage, novelty, or other) or commercial exhibitor who promotes and sells their product at an annual fair or Secondary Fair Event.
- b. Vendor contracts at Districts for Annual Fairs and/or Secondary Fair Events may be for a term of any period up to five Calendar Years.
- (1) A vendor contract prepared for a term of more than one Calendar Year shall be written for an initial one year term, and shall contain language indicating that:
    - a. The contract will automatically be renewed annually up to the total term of the contract upon agreement of the vendor and satisfactory performance evaluation by the District.
    - b. The District reserves the right to adjust the financial terms, concession/exhibit location, and any other terms and conditions each year upon renewal of the contract.
  - (2) Prior to entering into a vendor contract that exceeds one year, a District board shall:
    - a. Establish performance measures for annual performance evaluation of vendors whose contract exceeds one year.
    - b. Develop termination clause language to be included in vendor contracts that exceed one year.
    - c. Develop any other contract terms or conditions that the board deems to be in the best interest of the District when entering into vendor contracts that exceed one year.

**D. Vendor (Concessionaire or Commercial Exhibit) Fairtime Contract Worksheet**

Check off each item, as it is completed and/or added to the contract package.

- 1 - Std. 215, "Agreement Summary"** – Completed form
- 1 – Insurance** - Insurance certificate or copy of page from CFSA's Master Insurance List showing vendor's insurance coverage that covers fairtime.
- 1 - Board Resolution or Delegation of Authority** - (If multi-year, submit Board Resolution, and include total possible number of years, and total dollar amount).
  - 3 – F-31 "Rental Agreement Forms"**
  - Submit 3 completed signed copies of the F-31 with all applicable items completed as required.
  - Authorized signatures of contractor and DAA CEO on each copy of F-31.
- Any changes made to documentation initialed by both parties.

**Multi-Year Vendor Contract**

- If multi-year contract then show initial term of one year and include the following provisions in the contract as required per the Vendor Regulations described on preceding Vendor Contracts page:
  - Termination clause language as developed by the Association board.
  - Statement that the contract will automatically be renewed annually up to the total term of the contract upon agreement of the vendor and satisfactory performance evaluation by the Association.
  - Statement that the Association reserves the right to adjust the financial terms, concession/exhibit location, and any other terms and conditions each year upon renewal of the contract.
  - Statement that the Association reserves the right to not renew the contract if legislative budget changes occur.
    - Description of established performance measures for annual performance evaluation of vendors whose contract exceeds one year.
    - Any other contract terms or conditions that the board has deemed to be in the best interest of the Association when entering into vendor contracts that exceed one year.

**Attach and incorporate the following exhibits to each copy of Rental Agreement:**

- CFSA Insurance Requirements Form.
- Product List if Applicable.
- Standard Contract Terms and Conditions, SCTC (F-31) or using new F-31 with SCTC added.
- General Vendor Rules and Regulations as applicable.

**NOTE:**

- A copy of Association board's established Vendor Contract procedures as required by the regulation must be kept in the vendor contract files for audit purposes.

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**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *B & L Productions, Inc., et al. v. 22nd District Agricultural Association, et al.*  
Case No.: 3:19-cv-00134 CAB (NLS)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF PHILIP Y. OKITA**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra  
Attorney General of California  
Paul Stein  
Supervising Deputy Attorney General  
Joshua M. Caplan  
Deputy Attorney General  
P. Patty Li  
Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
E-mail: [patty.li@doj.ca.gov](mailto:patty.li@doj.ca.gov)  
*Attorneys for Defendants*

I declare under penalty of perjury that the foregoing is true and correct.

Executed April 17, 2019.

/s/ Laura Palmerin  
Laura Palmerin