



Mike Chrisman, Secretary for Natural Resources, Council Chair  
John Garamendi, Lieutenant Governor, State Lands Commission Chair  
Linda Adams, Secretary for Environmental Protection  
Susan Golding, Public Member  
Geraldine Knatz, Public Member  
Fran Pavley, State Senator  
Pedro Nava, State Assemblymember

October 7, 2009

**REQUEST FOR PROPOSALS-  
Notice to Prospective Applicants**

You are invited to review and respond to this Request for Proposal (RFP) for consulting services for the Ocean Protection Council. In submitting your proposal, you must comply with the following instructions.

Note that all agreements entered into with the State of California will include by reference General Terms and Conditions and the Contractor Certification Clauses that are attached to this Request for Proposals and may be viewed and downloaded at the internet site:

<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

In the opinion of the Ocean Protection Council, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this RFP is:

Doug George  
Project Manager  
Ocean Protection Council  
1330 Broadway St., Suite 1300  
Oakland, CA 94612  
[dgeorge@scc.ca.gov](mailto:dgeorge@scc.ca.gov)

Please note that no *verbal* information given will be binding upon the state unless such information is issued in writing as an official addendum.

Erlinda Corpuz  
Contract Administrator

## **A. Purpose and Description of Service**

The California Ocean Protection Council (OPC), through the State Coastal Conservancy, is seeking a qualified Contractor to evaluate the OPC's performance to date against the goals of the California Ocean Protection Act (COPA) and the 2006 Strategic Plan and to identify opportunities to improve institutional processes and strategic goals.

### **1. Background**

The OPC was established pursuant to the requirements of the [California Ocean Protection Act](#) (COPA) that was signed into law in 2004 by Gov. Arnold Schwarzenegger. The OPC's mission is to ensure that California maintains healthy, resilient, and productive ocean and coastal ecosystems for the benefit of current and future generations.

The OPC enabling legislation envisioned a unique role for the organization in integrating and coordinating the state's laws and institutions responsible for protecting and conserving ocean resources through: (i) improved institutional processes; (ii) changes to state and federal policies and laws; and (iii) better use of scientific information to inform decision-making. The expectation is that such changes will yield greater effectiveness in ocean stewardship and improved efficiency in the use of public and private funds for this purpose.

In its first five years, the OPC has made significant contributions to improved ocean and coastal management that has been guided by the 2006 five-year strategic plan. Now, as the organization begins preparations for the next strategic plan, it is an opportune time to evaluate its performance to date against the goals of COPA and to identify opportunities to improve institutional processes, address the adequacy of policies and laws, and to integrate science into decision making.

### **2. Scope of Work**

The OPC seeks the services of a Contractor for an approximately six-month contract to conduct an assessment of achievements to date and recommend how best to align the OPC's future activities, actions, and strategies with the intent and purpose of COPA. The study should provide practical recommendations to help guide the next phase of the OPC's work.

The Contractor will be asked to:

1. Assess OPC's activities and accomplishments to date. This will include the OPC's overall portfolio and allocation of funding, resources, and staff time to items within this portfolio.
  - What are the key policy and funding decisions made by the OPC to date?

- To what extent have these actions measurably advanced the goals of COPA or affected key policy and legislative issues at the state and federal level since the OPC's inception in 2004?
  - What lessons can be learned from these efforts that could improve the OPC's future efficiency and effectiveness? For example, how has the OPC interpreted its mandate under COPA? Do opportunities exist for building upon or augmenting past efforts in ways that will most strategically advance COPA goals? Alternatively, do opportunities exist to modify or eliminate less effective investments of staff time or funding?
  - Is the OPC's past portfolio of expenditures and actions a balanced and appropriate match to the COPA mandate? How have these expenditures and actions addressed the strategic plan?
2. Assess OPC's present systems, metrics, structures, and processes and their relative efficiency and effectiveness – including aspects of OPC collaboration and constituency engagement, balance and transparency, capacity, and public perception.

*2a. Metrics and performance criteria*

- What clear and objective criteria could be used to measure both successes and areas for improvement for the organization? For example, what metrics, standards, and processes should the OPC establish in order to allow objective assessment of its effectiveness in accomplishing COPA goals and to assist OPC members and staff in making strategic choices?

*2b. Collaboration and constituency engagement*

- What opportunities exist for enhancing OPC collaboration with state line agencies in ways that will ensure it creates lasting improvements to ocean and coastal resource policy and management in California?
- How can the OPC best fill its unique niche in bringing together diverse parties, information, and elements to develop cooperative strategies that are both coherent and successful? How might the OPC forge more effective working relationships with federal agencies and other external collaborators?
- What are the best mechanisms for the OPC to use in routinely communicating with and providing for meaningful engagement of its constituencies, including public agencies, the state legislature, stakeholders, and the public?

*2c. Balance and transparency*

- How can the OPC ensure that it has balanced and transparent decision-making processes that rely upon the best available science?
- Has the OPC developed a systematic and effective way for identifying and engaging in key policy and legislative issues at the state and federal level?

- Has the OPC developed a systematic approach for identifying and securing long-term funding to advance OPC goals?
- What opportunities exist to improve the effectiveness of OPC decision-making?

*2d. Capacity and structure*

- How can the OPC make best use of its standing bodies and their members, including the Council itself, the OPC Steering Committee, and the Science Advisory Team?
- What types of staff capacity and institutional structures and processes does the OPC need to successfully implement COPA? What opportunities exist to augment or modify OPC capacity, structures, or processes in ways that will best advance the goals of COPA?
- How sustainable is the OPC and do opportunities exist to improve its sustainability through changing administrations?

*2e. Perception among key collaborators and constituents*

- How is the OPC perceived by external constituents and collaborators in terms of its role, way of doing business, and impacts?
- How can the OPC ensure it has an effective voice and is it well-positioned to catalyze change?

3. Develop specific recommendations to the OPC for improvement. The study should specify the relative priority, approximate costs when appropriate, benefits, risks, and feasibility of each recommendation. The recommendations should address the full range of issues identified in the questions above and may include suggested changes to OPC systems, structures, processes, actions, strategies, metrics, policies, and/or enabling legislation. Importantly, the recommendations must include specific suggestions for revision of the OPC strategic plan.

***Study Approach***

Tools and approaches used in the study to develop information may include, but are not limited to:

- Objective fact finding through document review, budget analyses, review of OPC meeting minutes, etc.
- Interviews, focus groups, and round-table discussions with key players, including OPC members, OPC and agency staff, collaborators, and constituents.
- External surveys.
- Case study analyses of policy issues and funding investments.
- Identification of functional roles and capacities.
- Creation of OPC performance metrics and the application of these metrics.

The study process must effectively and sensitively engage key OPC collaborators and constituencies (e.g., public agencies, the state legislature, private funders, and various stakeholders in the scientific, NGO, coastal, and industry communities).

### **3. Rates, Schedules and Reporting**

The Contractor will provide services at the specific rates provided in the application budget and according to a negotiated schedule. The Contractor will provide oral, e-mail or formal reports and or agreements for each deliberative process as agreed between the OPC and the Contractor.

### **4. Disbursements**

Disbursements shall be made to the Contractor on the basis of services rendered and costs incurred to date, less ten percent, in accordance with the approved rates and costs. Invoices may be submitted no more frequently than monthly but no less frequently than quarterly. A copy of the sample contract language for costs and disbursements is attached as Exhibit A.

### **5. Minimum Qualifications for Applicants**

Applicants should have proven experience in completing comprehensive programmatic assessments and reviews and receive a minimum of 50 points under the proposal evaluation and scoring section below.

## **B. Proposal Requirements and Information**

### **1. Key Action Dates**

RFP available to prospective Applicants	October 7, 2009
Final Date for Proposal Submission	October 30, 2009
Anticipated Notice of Intent to Award	November 13, 2009
Proposed Award Date	December 11, 2009

### **2. Pre-Proposal Questions and Responses**

Questions concerning the scope of work, Contractor requirements, or other issues may be raised via e-mail during the 20 days following the availability of the RFP. All questions should be addressed to Doug George: [dgeorge@scc.ca.gov](mailto:dgeorge@scc.ca.gov).

### **3. Proposal Components and Personnel Qualifications**

### **a. Related Experience and Qualifications of Firm**

The applicant should describe the firm's qualifications that pertain to the work described in this RFP. Indicate relevant experience, past projects, and knowledge related to:

1. California ocean-related legislation, policies, programs, capacities, and issues
2. The California Ocean Protection Council, its enabling legislation, mission, and activities
3. Gathering information using a range of techniques or approaches (documents, interviews, surveys, etc)
4. Assessing organizational structure, successes, and effectiveness (preferably within the context of government agencies) and providing actionable recommendations
5. Documenting the outcomes and recommendations of programmatic evaluations

Specify how the firm would utilize personnel and carry out work tasks. Please also indicate any potential conflicts of interest that you may have in carrying out this project.

### **b. Project Personnel**

List all personnel who will be working as part of the consulting team, their related expertise, and titles. To the extent possible, reference specific personnel when describing the firm's expertise in section 3a. Resumes of all personnel who will contribute significantly must be included. Please provide an indication of ongoing staff availability (i.e., the likelihood of available staff time as new tasks are developed).

### **c. Project Approach**

Please describe your intended approach. Include information pertaining to projected study questions; the number, approach, and desired outcomes of interviews or surveys; the documents, legislation, and projects to be evaluated; and any other appropriate analyses or tools you will use to conduct this assessment. Please limit your description to 10 pages.

### **d. Cost/timeline/deliverables**

The proposed work should be broken down into an outline **detailing costs, billing rates, deliverables, and timelines** for the purpose of evaluating your proposal. The total costs of all tasks cannot exceed \$200,000. List normal and discounted billing rates, if applicable, of all personnel, and the expected range of hours needed to conduct work described in this RFP.

## **4. Submission of Proposal**

Proposals should provide straightforward and concise descriptions of the applicant's ability to satisfy the requirements of this RFP. The proposal must be complete and accurate. Omissions, inaccuracies or misstatements may be cause for rejection of a proposal.

- a. The proposal package should be prepared in the least expensive method.
- b. All proposals must be sent to the OPC by dates and times shown in Section B, Proposal Requirements and Information, (Item 1- Key Action Dates). Proposals received after this date and time will not be considered.
- c. All proposals shall include the documents identified in the Attachment Checklist (see page 9). Proposals not including the proper "required attachments" shall be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements.
- d. Proposals may be submitted electronically in either MS Word or Adobe PDF format to [dgeorge@scc.ca.gov](mailto:dgeorge@scc.ca.gov) or by mail to Doug George on or before Wednesday, October 28, 2009, at 4:30 p.m. Send or deliver proposals and any documents requiring original signatures (proposer certification Exhibit D) to the following address:

Doug George  
Ocean Protection Council  
1330 Broadway St., Suite 1300  
Oakland, CA 94612

Proposals must be submitted for the performance of all the services described herein. Any deviation from the work specifications will not be considered and will cause a proposal to be rejected.

The state may reject any or all proposals and may waive an immaterial deviation in a proposal. The state's waiver of an immaterial deviation shall in no way modify the RFP document or excuse the applicant from full compliance with all requirements if awarded the agreement.

Costs incurred for developing proposals, in anticipation of award of the agreement are entirely the responsibility of the applicant, and shall not be charged to the state of California.

An applicant may modify a proposal after its submission by withdrawing its original proposal and submitting a new proposal prior to the proposal submission deadline as set forth in the Key Action Dates. Proposal modifications offered in any other manner will not be considered. An applicant may withdraw its proposal by submitting a written withdrawal request to the OPC, signed by the applicant or an authorized agent in accordance. An applicant may thereafter submit a new proposal prior to the proposal submission deadline.

The OPC may modify the RFP prior to the date fixed for submission of proposals by the issuance of an addendum to all parties who received a proposal package.

The awarding agency reserves the right to reject all proposals. The agency is not required to award an agreement. No oral understanding or agreement shall be binding on either party.

Before submitting a response to this solicitation, applicants should review, correct all errors and confirm compliance with the RFP requirements.

### 5. Proposal Evaluation and Scoring

At the time of proposal opening, each proposal will be checked for the presence or absence of required information in conformance with the submission requirements of this RFP. Proposals that contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the applicant, may be rejected. Award, if made, will be to the highest scored responsible proposal.

Proposals will be evaluated and scored according to the criteria indicated below. A minimum of 60 points must be achieved in this phase to be considered responsive.

<u>Rating/Scoring Criteria</u>	<u>Maximum Possible Points</u>
Cost (based on evaluation of rates and hours proposed)	30 points
Knowledge of existing California ocean-related legislation, policies, programs, capacities, and issues.	5 points
Familiarity with the California Ocean Protection Council, its enabling legislation, mission, and activities.	5 points
Experience with assessing organizational structure, successes, and effectiveness (preferably within the context of government agencies) and providing actionable recommendations.	15 points
Proven success in (1) effective communication with a wide variety of stakeholders and (2) delivering findings in a useful format.	10 points
Overall match of the team's capacities, knowledge, training, and experience to the project tasks.	20 points
Project approach	15 points
SBE Preference	5 points
DVBE Preference	5 points
Total possible points	110 points



## **6. Award and Protest**

Notice of the proposed award shall be posted in a public place in the office of the State Coastal Conservancy, 1330 Broadway, Suite 1300, Oakland, CA 94612, for five (5) working days prior to awarding the agreement.

If any applicant, prior to the award of agreement, files a protest with the State Coastal Conservancy and the Department of General Services, Office of Legal Services, 707 Third Street, 7th Floor, Suite 7-330 West Sacramento, CA 95605, on the grounds that the protesting applicant would have been awarded the contract had the agency correctly applied the evaluation standard in the RFP, or if the agency followed the evaluation and scoring methods in the RFP, the agreement shall not be awarded until either the protest has been withdrawn or the Department of General Services has decided the matter. It is suggested that you submit any protest by certified or registered mail.

Within five (5) days after filing the initial protest, the protesting applicant shall file with the Department of General Services, Office of Legal Services, and the OPC a detailed statement specifying the grounds for the protest.

Upon resolution of any protest, and the award of the agreement, the Contractor must complete and submit to the awarding agency the Payee Data Record (STD 204), to determine if the Contractor is subject to state income tax withholding pursuant to California Revenue and Taxation Code Sections 18662 and 26131. This form can be found on the Internet at [www.osp.dgs.ca.gov](http://www.osp.dgs.ca.gov) under the heading FORMS MANAGEMENT CENTER. No payment shall be made unless a completed STD 204 has been returned to the awarding agency.

## **7. Disposition of Proposals**

Upon proposal opening, all documents submitted in response to this RFP will become the property of the state of California, and will be regarded as public records under the California Public Records Act (Government Code Sections 6250, et seq.) and subject to review by the public. Proposal packages may be returned only at the applicant's expense, unless such expense is waived by the awarding agency.

## **8. Agreement Execution and Performance**

Performance shall start no later than 30 days, or on the express date set by the OPC and the Contractor, after all approvals have been obtained and the agreement is fully executed. Sample contract language is attached as Exhibits A, B, and C. Should the Contractor fail to commence work at the agreed upon time, the awarding agency, upon five (5) days written notice to the Contractor, reserves the right to terminate the agreement. In addition, the Contractor may be

liable to the State for the difference between the Contractor's Proposal price and the actual cost of performing work by another Contractor. All performance under the agreement shall be completed on or before the completion date section of the agreement. All billing must be completed before the termination date of the agreement.

## **9. Preference Programs**

### ***Small Business Preference***

A five point incentive will be added to certified small business proposers. This incentive is for evaluation purposes only and cannot be used to achieve the minimum point requirements. An explanation of the small business preference program and requirements can be found at the Internet Web site for the Small Business Preference <http://www.pd.dgs.ca.gov/smbus/sbcert.htm>.

### ***Disabled Veteran's Business Enterprise Incentive***

The Secretary to the OPC has determined to waive this solicitation from Disabled Veteran Business Enterprise (DVBE) program requirements. However, the OPC will still provide a five point incentive for proposers who demonstrate DVBE participation in the contract to be awarded. DVBE incentive participation is optional and at the discretion of the proposing firm.

If the proposed chooses to participate, the DVBE incentive is applied during the evaluation process. The five point incentive is applied if there is at least 3 percent DVBE participation, performing a commercially useful function. This incentive is for evaluation purposes only and cannot be used to achieve the minimum point requirements. Services or commodities provided by the DVBE firm MUST meet the definition of a "Commercially Useful Function" as defined under Government Code Sections: 14837; 14838.6; 14839; 14842; 14842.5 and Military and Veterans Code 999 and 999.6. A DVBE firm not meeting CUF regulations will render the responding firm ineligible for the DVBE incentive.

### ATTACHMENT CHECK LIST

A complete proposal or proposal package will consist of the items identified below. Complete this checklist to confirm the items in your proposal. Place a check mark or “X” next to each item that you are submitting to the OPC. For your proposal to be responsive, all required attachments must be submitted. This checklist should be submitted with your proposal package also.

**Attachment   Attachment Name/Description**

\_\_\_\_\_ Attachment 1 Proposal Components and Personnel Qualifications (see B3)

\_\_\_\_\_ Attachment 2 Proposal/Applicant Certification Sheet

\_\_\_\_\_ Attachment 3 Applicant References

\_\_\_\_\_ Attachment 4 Small Business Participation Certification Form, available by following the appropriate links at <http://www.pd.dgs.ca.gov/smbus/getcertified.htm>.

\_\_\_\_\_ Attachment 5 DVBE Participation Certification Form, available by following the appropriate links at <http://www.pd.dgs.ca.gov/smbus/getcertified.htm>.

\_\_\_\_\_ Attachment 6 Contractor Certification Clauses (CCC). The CCC can be found below and on the Internet at [www.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language).

**ATTACHMENT 2**

**PROPOSAL/APPLICANT CERTIFICATION SHEET**

This Proposal/Applicant Certification Sheet must be signed and returned along with all the "required attachments" as an entire package. Signed original certification sheets may be mailed separately if the proposal is submitted electronically.

Place all required attachments behind this certification sheet.

The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

**An Unsigned Proposal/Applicant Certification Sheet  
 May Be Cause For Rejection**

1. Company Name	2. Telephone Number ( )	2a. Fax Number ( )
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)	8. California Corporation No.	
9. Indicate applicable license and/or certification information:		
10. Applicant's Name (Print)	11. Title	
12. <b>Signature</b>	13. Date	
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:		
a. California Small Business Yes <input type="checkbox"/> No <input type="checkbox"/>		
If yes, enter certification number: _____		
b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/>		
If yes, enter your service code below: _____		
<b>NOTE:</b> A copy of your Certification is required to be included if either of the above items is checked "Yes".		
Date application was submitted to OSBCR, if an application is pending: _____		

### Completion Instructions for Proposal/Applicant Certification Sheet

Complete the numbered items on the Proposal/Applicant Certification Sheet by following the instructions below.

Item Numbers	Instructions
1, 2, 2a, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
6	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
10, 11, 12, 13	Must be completed. These items are self-explanatory.
14	If certified as a California Small Business, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veterans Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to OSBCR.

**ATTACHMENT 3**

**APPLICANT REFERENCES**

Submission of this attachment or its equivalent is required. Failure to complete and return this attachment or its equivalent with your proposal will cause your proposal to be rejected and deemed nonresponsive.

List below three references for services performed within the last five years which are similar to the scope of work to be performed in this contract. If three references cannot be provided, please explain why on an attached sheet of paper. You can provide references and a discussion of services rendered on a different sheet of paper if desired, but the information on this form must be provided.

<b>REFERENCE 1</b>			
Name of Firm or Agency			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service	
Brief Description of Service Provided			

<b>REFERENCE 2</b>			
Name of Firm or Agency			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service	
Brief Description of Service Provided			

<b>REFERENCE 3</b>			
Name of Firm or Agency			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service	
Brief Description of Service Provided			

OPC Program Evaluation  
Project # 09-023

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## **Exhibit A: Sample Payment Conditions**

### **COSTS AND DISBURSEMENTS**

The total amount of funds disbursed under this contract shall not exceed \$ \_\_\_\_\_. The amount encumbered by this contract is based on the current level of funding available for the services under this contract.

The OPC shall make disbursements to the Contractor on the basis of services rendered and costs incurred to date, less ten percent, upon satisfactory progress in accordance with schedules, budgets, and other provisions of this contract, attached as exhibit \_\_\_\_, and upon submission of an invoice, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The OPC shall disburse the ten percent withheld upon completion of all tasks to the satisfaction of the OPC and upon the submission of a final invoice.

Services shall be billed at no more than the standard billing rate for the following personnel of Contractor and its subcontractors:

Principal	\$ /hr.
Senior Associate	\$ /hr.
Associate	\$ /hr.
Administrative services	\$ /hr.

The OPC will reimburse the Contractor for direct expenses necessary to the provision of services under this contract when documented by appropriate invoices and receipts. The OPC will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations, except that reimbursement may be in excess of these rates upon provision of documentation that rates in compliance are not reasonably available to the Contractor. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the rate specified for excluded employees in (currently \$0.55/mile) as of the date the cost is incurred. The OPC will reimburse the Contractor at cost for other necessary expenses if those expenses are reasonable in nature and amount taking into account the services provided and other relevant factors.

The Contractor shall request disbursements by filing with the OPC a fully executed "Request for Disbursement" form (available from the OPC). The Contractor shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred of all work done for which disbursement is requested. The forms shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.



An authorized representative of the Contractor shall sign the forms. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the Contractor has incurred.
2. Original invoices from Contractors that the Contractor engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such Contractor, unless the Executive Officer makes a specific exemption in writing.
3. Written substantiation of completion of the portion of the project for which the Contractor is requesting disbursement.

With each form, the Contractor shall submit a supporting progress report summarizing the current status of the project and comparing it to the status required by the work program (budget, timeline, tasks, etc.). The Contractor's failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the OPC of its obligation to disburse funds to the Contractor until the Contractor corrects all deficiencies.

### **PROJECT COMPLETION**

Within ninety days of completion of the project, the Contractor shall supply the OPC with evidence of completion by submitting a final report which includes:

1. All deliverables identified in the work program;
2. A fully executed final "Request for Disbursement" form.

Within thirty days of the Contractor's compliance with this paragraph, the OPC shall determine whether the Contractor has satisfactorily completed the project. If so, the OPC shall issue to the Contractor a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter.

## **Exhibit B: Sample General Terms and Conditions**

### **GENERAL TERMS AND CONDITIONS**

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. The Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **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.
4. **AUDIT**: The Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all Contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.
6. **DISPUTES**: The Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due to the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: The Contractor, and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, the 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. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The 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.

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

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid to the Contractor, as provided herein, shall be in compensation for all of the Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

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

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code 7110, that:

a). The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”

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

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

## **EXHIBIT C: SAMPLE SPECIAL TERMS AND CONDITIONS**

### **1. Early Termination, Suspension or Failure to Perform**

The Conservancy may terminate this contract for any reason by providing seven days written notice to the Contractor. During the term, the Conservancy may also suspend the contract before the work is complete. In either case, upon receipt of notice of termination or suspension, the Contractor shall immediately stop work under the contract and take whatever measures are necessary to prevent further costs to the Conservancy under this contract. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the Contractor in the performance of this contract up to the date of notice to terminate or suspend, but only up to the unpaid balance of total funds authorized under this contract. Any notice suspending work under this contract shall remain in effect until further written notice from the Conservancy authorizes work to resume. On or before the date of termination of the contract under this section, the Contractor shall provide the Conservancy with all work, material, data, information, and written, graphic or other work produced or developed under this contract (whether completed or partial), in appropriate, readily useable form. The Contractor shall include in any contract with any subcontractor retained for work under this contract a provision that entitles the Contractor to suspend or terminate the contract with the subcontractor for any reason on written notice and on the same terms and conditions specified in this section.

### **2. Executive Officer's Designee**

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this Agreement. The Executive Officer shall notify Contractor of the designation in writing.

### **3. Project Completion**

Contractor shall complete the work under this Agreement by the completion date provided in the "TERM OF AGREEMENT" section, above. Upon completion of the project, Contractor shall supply the Conservancy with evidence of completion by submitting: (1) the required work products; and (2) a fully executed final "Request for Disbursement" form. Within thirty days of Contractor's compliance with this paragraph, the Conservancy shall determine whether the project has been satisfactorily completed. If the Conservancy determines that the project has been satisfactorily completed, the Conservancy shall issue to Contractor a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter of acceptance.

#### **4. Computer Software**

Contractor certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this Agreement, state funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

#### **5. Work Products**

All material, data, information, and written, graphic or other work produced under this Agreement is subject to the unqualified and unconditional right of the Conservancy to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the Conservancy is granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The Contractor shall include in any subcontract with a third party for work under this Agreement terms that preserve the rights, interests, and obligations created by this section, and that identify the Conservancy as a third-party beneficiary of those provisions.

## ATTACHEMENT 6: Contractor Certification Clauses

**CCC-307**

### CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of</i>

### CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** The Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** The Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

1) the dangers of drug abuse in the workplace;

2) the person's or organization's policy of maintaining a drug-free workplace;



- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and the Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: The Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against the 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 the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: The Contractor hereby certifies that the Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

The Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: The Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The Contractor agrees to cooperate fully in providing reasonable access to the Contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

## **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST**: The Contractor needs to be aware of the following provisions regarding current or former state employees. If the 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 (Pub. Contract Code §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 (Pub. Contract Code §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 the Contractor violates any provisions of above paragraphs, such action by the Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. **LABOR CODE/WORKERS' COMPENSATION**: The Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and The Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: The Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. 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.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: 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.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all Contractors that are not another state agency or other governmental entity.