

CONTRACTS IN PLAIN LANGUAGE FOR SMALL BUSINESS



SHORT-FORM ANNOTATIONS

John L. Geiger, Esq.
General Manager - Standards & Practices
Los Angeles County Internal Services Department



Plain Language Award
24th Annual Productivity & Quality Awards Program
October 2010



Center for Plain Language
Washington, D.C.



California State Association of Counties
2010 Challenge Merit Award Recipient

I. THE PARTIES & THE DEAL

RECITALS

States the background and general purpose of the contract, including the County's legal authority and reason for entering into it.

1.0 APPLICABLE DOCUMENTS

Lists the documents that form the entire Contract (as defined with a capital "C"), and establishes the priority among each document (*i.e.*, higher documents control over lower).

2.0 DEFINITIONS

Definitions are short-form references for names, terms, and concepts that are frequently repeated in the contract.

Properly using definitions saves time and improves readability and assures consistency, especially whenever it's unclear if a word is to be interpreted in its ordinary, technical, or legal sense, or otherwise.

But improperly using definitions (*e.g.*, terms overused, unnecessarily defined, or incompletely defined) undermines clarity.

3.0 WORK

Contractor's required performance under the contract.

4.0 TERM OF CONTRACT

States when the contract starts and ends.

5.0 CONTRACT SUM

States the total contract price, along with payment terms (*e.g.*, what Contractor will and will not be paid for, payment amount, and the way to get paid).

II. WARRANTIES & REPRESENTATIONS

6.0 WARRANTIES

Project specific, and therefore are not included in the model.

III. REMEDIES

7.0 NOTICE OF DELAYS

Requires the parties to give each other advance notice if a deadline is going to be missed.

8.0 NOTICE OF DISPUTES

Requires Contractor to bring disputes to the attention of County's project management.

9.0 INDEMNIFICATION

Contractor will pay for any harm it causes to third parties, even if the third parties seek recovery from the County only, and not Contractor.

10.0 GENERAL INSURANCE REQUIREMENTS

Requires Contractor to carry certain categories and amounts of insurance coverage.

11.0 INSURANCE COVERAGE REQUIREMENTS

A continuation of Section 10.0 (General Insurance Requirements), which requires Contractor to carry certain categories and amounts of insurance coverage.

12.0 PATENT, COPYRIGHT & TRADE SECRET INDEMNIFICATION

Contractor will pay for any harm it causes to third parties, even if the third parties seek recovery from the County only, and not Contractor. Further, Contractor will cure any infringement by getting the rights to, or working around, the questioned product.

13.0 TERMINATION FOR CONVENIENCE

The County can end the contract at any time for any reason.

14.0 TERMINATION FOR DEFAULT

The County can end the contract if Contractor fails to perform, and does not cure its failure.

IV. TECHNICAL & HOUSEKEEPING

15.0 ADMINISTRATION OF CONTRACT - COUNTY

Identifies County's project management team.

16.0 ADMINISTRATION OF CONTRACT - CONTRACTOR

Identifies Contractor's project management team.

16.5 Confidentiality

Contractor must maintain the confidentiality of County records.

17.0 AMENDMENTS

An amendment is a contract change. Generally, amendments must be made in the same way the original contract was made (*e.g.*, in writing, signed by the same persons). One exception, here, is for extensions of time, which may be done less formally with a change notice.

18.0 ASSIGNMENT AND DELEGATION

No transfer of rights (*i.e.*, a third party to receive payments) is allowed without the County's written consent first.

No transfer of duties (*i.e.*, a third party to perform services) is allowed without the County's written consent first.

19.0 AUTHORIZATION WARRANTY

The person signing for Contractor has the full authority to do so.

20.0 BUDGET REDUCTIONS

Allows cut-backs in contract services if the County has severe budget cut-backs.

21.0 COMPLAINTS

Requires Contractor to receive, investigate, and respond to complaints.

22.0 COMPLIANCE WITH APPLICABLE LAW

Requires Contractor to obey all laws. If Contractor does not, and the County is harmed, then the Contractor is responsible for payment.

23.0 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

Requires Contractor to repair, or pay for repair of, any damage it causes to County property.

24.0 FACSIMILE REPRESENTATIONS

A fax signature is as effective as an original hardcopy.

25.0 GOVERNING LAW, JURISDICTION, AND VENUE

Any lawsuit must be brought in Los Angeles County only. And California law will be applied.

26.0 INDEPENDENT CONTRACTOR STATUS

Contractor is an independent contractor, and anyone working under this contract is deemed an employee of Contractor.

27.0 MOST FAVORED PUBLIC ENTITY

Contractor must give the County its very best pricing.

28.0 VALIDITY

The parties agree to the rule of contract interpretation which allows the Court to disregard invalid clauses so that it may otherwise hold the remaining contract as binding.

29.0 WAIVER

The County will not be deemed to have surrendered any of its right or remedies simply because it declines to exercise them.

30.0 OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT

The County alone owns all materials created by Contractor under the contract, but not any materials created or acquired outside the contract.

31.0 NON EXCLUSIVITY

The County may seek the same services from other Contractors.

32.0 PUBLIC RECORDS ACT

Project documents are public records.

V. COUNTY PROGRAMS

33.0 COMPLIANCE WITH CIVIL RIGHTS LAWS

Contractor must not discriminate based on race, color, creed, ancestry, sex, gender, religion, age, handicap, marital status, political affiliation, or national origin.

34.0 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

Contractor must pay for five (5) days of jury service by any employee. Certain exceptions apply.

35.0 CONFLICT OF INTEREST

Contractor must not hire or otherwise pay any County employee who could influence the award of the contract.

36.0 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Neither party can woo away individual employees of the other until at least a year after the contract ends.

37.0 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

If, during the term of the contract, Contractor needs more personnel for work on this contract, then Contractor must first consider certain County employees.

38.0 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

If, during the term of the contract, Contractor needs more personnel for work on this contract, then Contractor must first consider certain County employees.

39.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT

For inadequate performance, a Contractor may be brought before the County’s Debarment Board for an evidentiary hearing. This may result in the Contractor being barred from County work, on this and any other contract, for up to five years.

40.0 CONTRACTOR’S ACKNOWLEDGEMENT OF COUNTY’S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

In support of the County’s “Safely Surrendered Baby Law,” the Contractor must post a program poster in its business office.

41.0 CONTRACTOR’S WARRANTY OF ADHERENCE TO COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM

Requires Contractor to comply with wage reporting requirements under child, family, and spousal support laws.

42.0 COUNTY’S QUALITY ASSURANCE PLAN

The County will evaluate Contractor’s performance from time to time, and report problems to the Board of Supervisors.

43.0 EMPLOYMENT ELIGIBILITY VERIFICATION

Contractor must have documents verifying employment eligibility status for all its employees.

44.0 FAIR LABOR STANDARDS

Requires Contractor to comply with all wage and hour laws.

45.0 NONDISCRIMINATION

Contractor will not discriminate based on race, color, creed, ancestry, sex, gender, religion, age, handicap, marital status, political affiliation, or national origin.

In effect, this clause is identical to Section 33.0 (Compliance with Civil Rights Laws), except that it also includes audit and liquidated damages provisions.

46.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

Contractor must inform its employees about the EIC. That can be done by giving them either [1] a W-2 (Wage & Tax Statement) ,which has information about the EIC on the back of the employee’s Copy B, or [2] a copy of IRS Notice 797.

47.0 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

Contractor must give each of its employees a copy of Exhibit I (Safely Surrendered Baby Law).

48.0 NOTICES

All notices must be in writing.

49.0 PUBLICITY

Except for a statement that it has been awarded this contract, Contractor must get the County's written consent before it can otherwise use the County's name in its advertisements.

50.0 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

Requires Contractor to keep GAAP-compliant project financial records for five years. County is allowed access to those records, and to any audit conducted by another governmental entity.

51.0 RECYCLED BOND PAPER

Contractor must use recycled bond paper whenever possible.

52.0 SUBCONTRACTING

No subcontracting without the County's advance written consent.

In effect, subcontracting requirements are already covered by Section 18.0 (Assignment and Delegation), as all subcontracts are a delegation of duties.

53.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

If Contractor fails to comply with wage reporting requirements under child, family, and spousal support laws [Section 41.0], then the County may terminate the contract for default.

54.0 TERMINATION FOR IMPROPER CONSIDERATION

If Contractor paid any County employee, officer, or agent for award of this contract, then the County may cancel the contract.

55.0 TERMINATION FOR INSOLVENCY

County can terminate this contract if Contractor is in serious financial trouble.

56.0 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

If Contractor violates the lobbying ordinance, then County may terminate the Contract.

57.0 TERMINATION FOR NON-APPROPRIATION OF FUNDS

If funds are not appropriated for this contract, then County can terminate it.

58.0 WARRANTY AGAINST CONTINGENT FEES

Contractor warrants that no one received any compensation on the side for obtaining this contract.

59.0 COMPLIANCE WITH THE COUNTY'S LIVING WAGE PROGRAM

Contractor must pay a living wage of at least \$11.84 per hour (without a certain level of health care), or \$9.64 (with a certain level of health care). [rates approved 6/15/07]

60.0 CONTRACTOR’S OBLIGATIONS AS A “BUSINESS ASSOCIATE” UNDER HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (HIPAA)

If Contractor will be handling medical records, then it must sign Exhibit N [Obligations under HIPAA].

61.0 LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM

Contractor must not falsely represent itself as a Local Small Business, including for purposes of award of this contract or SBE certification.

62.0 CONTRACTOR’S CHARITABLE ACTIVITIES COMPLIANCE

Contractor must complete and sign Exhibit O (Charitable Contributions Certificate).