



*Committed to Achieving Clean Air to Protect
the Public's Health and the Environment*

August 13, 2007

REQUEST FOR PROPOSALS 2007-083
District-Wide Procedures and Controls Audit

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SECTION I - SUMMARY

The District is seeking a consultant to conduct a District-Wide Procedures and Controls Audit, which will contain the following:

- An evaluation of the District's policies and procedures for all Divisions to determine that the operations are effective and efficient
- Determination of District compliance with all applicable laws and regulations
- Comparison of the District's policies, processes and procedures with actual operations
- A written report on weaknesses and strengths noted while conducting the audit, and clear, actionable recommendations where weaknesses are found.

To respond to this RFP, interested parties should submit two (2) copies of a proposal to:

Matt Serier, Purchasing Agent
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Proposals must address all information requested in this RFP. A proposal may add information not requested in this RFP, but the information should be in addition to, not instead of, the requested information and format. Minority business enterprises, women's business enterprises, and Certified Green Businesses are encouraged to submit proposals. Any questions regarding this RFP should be directed to Matt Serier at voice: (415) 749-4987 or email: mserier@baaqmd.gov.

Proposals must be received at the Air District offices 939 Ellis Street, San Francisco, California, 94109 by 4:30 PM on September 14, 2007. Late proposals will not be considered.

SECTION II – BACKGROUND

A. Air District Overview

The Bay Area Air Quality Management District (Air District) was created by the California Legislature in 1955 as the first regional agency to deal with air pollution in California. The Air District jurisdiction includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, southwestern Solano, and southern Sonoma counties.

The State Legislature originally gave the Air District the authority to regulate stationary sources of air pollution, such as factories, oil refineries, chemical plants, gasoline stations, and agricultural burning. With more recent legislation, the Air District was granted authority to enact certain transportation and mobile source measures.

The Air District is governed by a twenty-two member Board of Directors, consisting of elected officials, including county supervisors, mayors, and city council members.

The Air District currently has approximately 340 full time employees, with an Air Pollution Control Officer (APCO), two Deputy Air Pollution Control Officers (DAPCO), 6 Division Directors, and 29 Program Managers who oversee 57 different programs.

SECTION III – INSTRUCTIONS TO BIDDERS

A. General

1. All proposals must be made in accordance with the conditions of this RFP. Failure to address any of the requirements is grounds for rejection of the proposal.
2. All information should be complete, specific, and concise.
3. Proposals should include any additional information that the respondent deems pertinent to the understanding and evaluation of the bid.
4. The District may modify the RFP or issue supplementary information or guidelines during the proposal preparation period prior to September 14, 2007.
5. Proposals shall constitute firm offers. Once submitted, proposals cannot be altered without the written consent of the District, but proposals may be withdrawn.
6. The District reserves the right to reject any and all proposals.
7. All questions must be in written form and directed to Linda Serdahl and arrive no later than one week prior to the RFP due date. All questions will be answered in writing and posted on the BAAQMD RFP webpage one week prior to the due date.
8. The cost for developing the proposal is the responsibility of the bidder, and shall not be chargeable to the Air District.

B. Submittal of Proposals

1. Two copies of the proposals must arrive at the address specified in Section I by 4:30 p.m. on September 14, 2007; proposals received after this date and time will not be considered.

C. Interviews

1. The Air District, at its option, may interview bidders. The interviews will be for the purpose of clarifying the proposals.
2. Submittal of new proposal material at an interview will not be permitted.

SECTION IV – SCOPE OF WORK

The Air District is contracting for an evaluation of its policies, processes, and procedures for all Air District Divisions and Departments to determine that the operations of the Air District are efficient and effective, and have internal controls (proper checks and balances) in place. In addition, the evaluation should determine if the Air District is operating in compliance with all applicable laws and regulations, and if the policies, processes and procedures are actually operating as described.

- I. Document District process, procedures, and controls for testing purposes:
 - a.) Meet with Air District Directors or Executives from each of the following Divisions: Compliance & Enforcement, Engineering, Executive Office, Finance, Administration and Information Services, Legal Counsel, Outreach and Incentives, Planning, and Technical Services to determine the contacts for the Departments included in each Division. See Appendix A for a listing of the Division Departments.
 - b.) Contact each Air District Department Manager and determine the purpose of the department, the primary tasks, and the desired outcome of those tasks.
 - c.) Document the purpose and primary tasks workflow, with a combination of narratives and flowcharts. Submit to Air District Directors and Managers for review and comments. The Engineering Functions have already created highly detailed workflows to be used for pending software development; these workflows will be available as a resource for the successful bidder.
 - d.) Review the documented processes for efficiency and effectiveness, and proper internal controls (checks and balances) in completing primary Departmental tasks.
 - e.) Review Federal and State grant documentation to determine grant administration requirements, and appropriate expenditures
 - f.) Discuss any weaknesses noted during the review of the primary tasks and outcomes with the respective Air District Director and Manager, with sufficient time for management to investigate and submit a written response.
 - g.) Document and include the weaknesses in the Report to Management, including any mitigation by management.
- II. Test to determine if the Air District's policies, processes, and procedures are in place and functioning as described by management:
 - a) Review pre-existing written policies for conformance with policies as described by management.
 - b) Test actual processes, policies, procedures, and controls against both pre-existing and consultant-generated

documentation.

- c) Design tests to measure the efficiency, and effectiveness of processes and procedures, and to determine that proper internal controls are in place.
 - d) Design tests to determine if grant expenditures are being spent in accordance with grant requirements, and if all administrative requirements are being met by the Air District.
 - e) Discuss the test results with the Air District Directors and Managers of the respective Departments.
 - f) Document any deviations or weaknesses in the Air District policies, processes, and procedures and discuss with the Air District Directors and Managers for investigation.
 - g) Document any internal control weaknesses noted during observation, inquiry, and testing of District policies, processes, and procedures.
 - h) Document any deviations or weaknesses in the Air Districts Federal and State Expenditures, and grant administration.
 - i) Document and include the weaknesses in the Report to Management, including any mitigation by management.
 - j) Provide guidance to the Air District on best procedures for process documentation to maximize utility of the documentation for the Air District.
- III. Prepare a report for the Air District's management that summarizes the results of the evaluation of policies, processes and procedures, for efficiency, effectiveness and internal controls; and provides specific, prioritized, and actionable recommendations for improvements to policies, processes, and controls.

SECTION V – PROPOSAL FORMAT AND CONTENTS

A. Contents of Proposal

Submitted proposals must follow the format outlined below and include all requested information. Failure to submit proposals in the required format can result in the proposal being eliminated from evaluation and consideration.

1. Technical Proposal

- a) Cover Letter – Must include the name, address, and telephone number of the company, and must be signed by the person(s) authorized to represent the firm.
- b) Table of Contents – Clearly identify material contained in the proposal by section
- c) Summary (Section I) – State overall approach to the District-Wide Procedures and Controls Audit (Audit), including the objectives and scope of work.
- d) Firm Contact Information (Section II) – Provide the following information about the firm:
 - Address and telephone number of office nearest to San Francisco, California
 - Name of firm's representative designated as the contact
 - Name of project manager, if different from the individual designated as the contact
- e) Program Schedule (Section III) – Provide projected milestones or benchmarks for completing the project within the total time allowed.

- f) Firm Organization (Section IV) – Provide a statement of your firm's background and experience in providing audits to governmental organizations. Describe the technical capabilities of the firm and, in particular, the firm's exposure with working with environmental regulations, if any. Provide references of other, similar projects including contact name, title, and telephone number for all references listed.
- g) Project Organization (Section V) – Describe the proposed management structure, program monitoring procedures, and organization of the engagement team. Provide a statement detailing your approach to the project, specifically address the firm's ability and willingness to commit and maintain staffing to successfully conclude the project on the proposed schedule.
- h) Assigned Personnel (Section VI) – Provide the following information about the staff to be assigned to the project:
 - List all key personnel assigned to the project by level and name. Provide a description of their background, along with a summary of their experience in auditing governmental agencies, and any specialized expertise they may have. Substitution of project manager or staff will not be permitted without prior written approval of the Air District's assigned program manager.
 - Provide a statement of the availability of staff in a local office with requisite qualifications and experience to conduct the requested audit
 - Provide a statement of education and training programs provided to, or required of, the staff identified for participation in the project. Make particular mention of with reference to experience dealing with governmental agencies, procedures, and environmental regulations.
- i) Retention of Working Papers (Section VII) – All working papers are the property of the Air District. Include a statement acknowledging that if your firm is awarded the contract, you will retain project related papers and related reports for a minimum of five (5) years.
- j) Subcontractors (Section VIII) – List any subcontractors that will be used, the work to be performed by them, and the total number of hours or percentage of time they will spend on the contract.
- k) Conflict of Interest (Section IX) – Address possible conflicts of interest with other clients affected by clients actions performed by the firm on behalf of the Air District. The Air District recognizes that prospective bidders may have contracts to perform Control Audits for other clients. Include a complete list of such clients for the past three (3) years with the type of work performed and the total number of years performing such tasks for each client. The Air District reserves the right to consider the nature and extent of such work in evaluating the proposal.
- l) Additional Data (Section XI) – Provide other essential data that may assist in the evaluation of the proposal.

2. Cost Proposal

- a) Name and Address – The Cost Proposal must the name and complete address of the bidder in upper, left hand corner.
- b) Cost Proposal – The cost proposal must list the fully-burdened hourly rates and the total number of hours estimated for each level of professional and administrative staff to be used to perform the tasks required by this RFP. In addition have each of the different tasks required by this project broken down into separate cost schedules.

3. Proposal Submission

All proposals must be submitted according to the specifications set forth in Section V (A) – Contents of Proposal, and this section. Failure to adhere to these specifications may be cause for the rejection of the proposal.

- a) Signature – All proposals should be signed by an authorized representative of the bidder.
- b) Due Date – All proposals are due no later than 4:30 p.m., September 14, 2007 and should be directed to:

Matt Serier, Purchasing Agent
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

- c) Submittal – Submit two (2) complete copies of the proposal in a sealed envelope. Plainly mark the upper, left-hand corner with the name and address of the bidder and the RFP number. Late proposals will not be accepted. Any correction or re-submission of proposals will not extend the submittal due date.
- d) Addenda – The Air District may modify this RFP and/or issue supplementary information or guidelines relating to the RFP during the proposal preparation period.
- e) Grounds for Rejection – A proposal may be immediately rejected at any time after the deadline; is not in the prescribed format; or is not signed by an individual not authorized to represent the firm.
- f) Disposition of the Proposals – All responses to this RFP become property of the Air District.
- g) Modification – Once submitted, proposals, including the composition of the contracting team, cannot be altered without prior written consent of the Air District. All proposals shall constitute firm offers valid for ninety (90) days from September 14, 2007.

SECTION VI – PROPOSAL EVALUATION

A panel comprised of Air District staff will evaluate all proposals. The panel will recommend the selection of the contractor to the Air Pollution Control Officer (APCO), who will, in turn, make a recommendation to the Air District Board of Directors. The Air District Board of Directors must approve the contract to carry out the work described in this RFP. An example of a typical contract for professional services used by the Air District is included in Section VII.

Proposals will be evaluated on the following criteria:

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| 1. Technical expertise, size and structure of the firm and personnel assigned to RFP tasks; firm's ability to perform and complete the work in a professional and timely manner. | 30% |
| 2. Past experience of the firm and, in particular, experience of the team working on projects of similar scope for other governmental agencies. | 20% |
| 3. Responsiveness of the proposal, based upon a clear understanding of the work to be performed. | 20% |
| 4. Cost | 20% |
| 5. References of the firm, local business/Green Business* | 10% |

*The District supports green operating practices and local businesses and gives a preference to local businesses engaged in green business practices.

Green Business Operating Practices – Provide sufficient information to determine the extent of bidder's commitment to environmentally sound operational practices.

Bidder's Contact Information – Describe bidder's ability to staff the project locally, i.e., the availability of staff in a local office with requisite qualifications and experience. Provide the following information on the firm:

1. Address and telephone number of office in, or nearest to, San Francisco, California.
2. Name and title of representative designated as firm contact.
3. Name of contract manager, if different from representative designated as contact.

The Air District reserves the right to reject any and all proposals submitted and/or request additional information. During the selection process, the Air District's evaluation panel may interview bidders. The interviews will be for clarification only. The submittal of new material will not be permitted at that time.

If two or more proposals receive the same number of points, the Air District will accept the lower cost offer.

SECTION VII – SAMPLE CONTRACT

BAY AREA AIR QUALITY MANAGEMENT DISTRICT**PROFESSIONAL SERVICES CONTRACT****CONTRACT NO. year-number**

1. **PARTIES** – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 939 Ellis Street, San Francisco, CA 94109, and **name of company or individual** (“CONTRACTOR”) whose address is address, city, state, zip.
2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the services.
 - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.
3. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - D. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - E. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
4. **TERM** – The term of this Contract is from date to date, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.
5. **TERMINATION**
 - A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.
 - B. Either party may terminate this Contract for breach by the other party.
 - i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.

- ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
- iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the maximum amount available to CONTRACTOR under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
- iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
- v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE

A. CONTRACTOR shall maintain the following insurance:

- i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
- ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
- iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.
- iv) Optional Professional liability insurance with limits not less than to be determined by Business Manager each claim.

B. All insurance shall be placed with insurers acceptable to DISTRICT.

C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.

D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

7. INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, employees.
- B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, employees.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.
- B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.
- C. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
 - i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, Attn: Program Manager.
 - ii) DISTRICT shall not pay interest, fees, handling charges, or the cost of money on the Contract.
 - iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice.
- D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed amount.

9. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.

- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
- B. The mediation shall take place at DISTRICT's office at 939 Ellis Street, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
- C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
- D. Each party shall bear its own mediation costs.
- E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
- F. Maximum recovery under this section shall be limited to dollar amount equal to value of the contract. The mediation costs shall not reduce the maximum amount recoverable under this section.

10. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Attn: Satnam Hundel, Business Manager

CONTRACTOR: company or individual name
 street address
 city, state, zip
 Attn: companycontact

11. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
12. EMPLOYEES OF CONTRACTOR
- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
 - B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.
 - C. Optional CONTRACTOR shall assign those employees listed in the Cost Schedule to perform work under this Contract. CONTRACTOR shall not assign different employees to perform this work without the express written permission of DISTRICT, which DISTRICT will not unreasonably withhold.
 - D. Optional DISTRICT reserves the right to review the credentials to perform the work of any of CONTRACTOR's employees assigned herein and to disapprove CONTRACTOR's assignments. CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.
13. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR agrees to:
- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
 - B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
 - C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
 - D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
 - E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.

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- F. Prevent access to such materials by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this section.
14. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.
15. PUBLICATION
- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
- B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating “DRAFT – Not Reviewed or Approved by BAAQMD,” unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
- C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT’s public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.
- “This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report.”
- D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.
16. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall also require each subcontractor performing work in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.
17. PROPERTY AND SECURITY – Without limiting CONTRACTOR’S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT’s premises.
18. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
19. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing
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waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.

20. ATTORNEYS' FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
21. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.
22. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
23. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
24. DUPLICATE EXECUTION – This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
25. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application to another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
26. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.
27. SURVIVAL OF TERMS – The provisions of sections 7 (Indemnification), 13 (Confidentiality), 14 (Intellectual Property Rights), and 15 (Publication) shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

company name

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
name
title

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Brian C. Bunker
District Counsel

APPENDIX A

DEPARTMENTAL LISTING, BY DIVISION

<u>Division</u>	<u>Departments</u>
Compliance & Enforcement	401 – Enforcement 402 – Compliance Assistance & Operations 403 – Compliance Assurance
Engineering	501 – Permit Evaluation 502 – Permit Renewals 503 – Air Toxics 504 – Permit Operations 506 – Title V 507 – Engineering Special Projects 508 – Community Air Risk Evaluation
Executive Office	104 – Executive 106 – Payroll 107 – Benefits Administration 109 – Training 111 – Employment Relations 114 – Recruitment & Testing 121 – Board of Directors 122 – Hearing Board 123 – Advisory Council
Finance, Administration and Information Services	702 – Building Maintenance 703 – Communications 710 – Vehicle Maintenance 712 – Records Management 725 – Information Systems 726 – Computer Operations & Telecommunications
Legal Counsel	201 – Legal Counsel 202 – Hearing Board Proceedings 203 – Penalty Enforcement & Settlement 205 – Litigation

APPENDIX A

DEPARTMENTAL LISTING, BY DIVISION, Continued

<u>Division</u>	<u>Departments</u>
Outreach and Incentives	301 – Public Information 302 – Community Outreach 303 – Intermittent Control Programs (General Fund) 304 – Smoking Vehicles Program 305 – Spare the Air (CMAQ) 306 – Intermittent Control Programs (TFCA) 307 – Mobile Source Grants 308 – Transportation Fund for Clean Air (TFCA) 310 – Mobile Source Incentive Fund 312 – Vehicle Buy-Back
Planning, Rules & Research	601 – Source Inventories 602 – Air Quality Plans 603 – Central California Air Qualities Study 604 – Air Quality Modeling 605 – Mobile Source Measures 608 – Climate Change 609 – Community Air Risk Evaluation 611 – Rule Development
Technical Services	801 – Library 802 – Ambient Air Monitoring 803 – Laboratory 804 – Source Test 805 – Meteorology 807 – Air Monitoring Quality Assurance 809 – Bio Watch Monitoring