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**HEALTH AND SAFETY CODE - HSC**

**DIVISION 25.2. STATE DEPARTMENT OF HEALTH SERVICES COOPERATIVE AGREEMENT ACT [38070 - 38081.1]** (  
*Division 25.2 added by Stats. 1993, Ch. 1033, Sec. 1. )*

**CHAPTER 1. General Provisions [38070 - 38081.1]** (*Chapter 1 added by Stats. 1993, Ch. 1033, Sec. 1. )*

**38070.** This act shall be known and may be cited as the State Department of Health Services Cooperative Agreement Act.  
(*Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.*)

**38071.** The purposes of this division are:

- (a) To simplify the administration of public health programs by the State Department of Health Services.
- (b) To reduce the administrative cost of public health programs to the department.
- (c) To encourage units of state and local government and nonprofit organizations to attempt bold new solutions to local public health problems.

(*Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.*)

**38072.** For purposes of this division, the following definitions shall apply:

(a) "Cooperative agreement" means an agreement between the department and a unit of local government, any other unit of state government, or a nonprofit organization that provides for a contract under any of the following programs:

- (1) California AIDS Program (Chapter 2 (commencing with Section 120800) of Part 4 of Division 105).
- (2) Health of Seasonal Agricultural and Migratory Workers (Chapter 3 (commencing with Section 124550) of Part 4 of Division 106).
- (3) American Indian Health Services (Chapter 4 (commencing with Section 124575) of Part 4 of Division 106).
- (4) Rural Health Services Development (Chapter 5 (commencing with Section 124600) of Part 4 of Division 106).
- (5) Grants-In-Aid for Clinics (Article 1 (commencing with Section 124875) of Chapter 7 of Part 4 of Division 106).
- (6) Expanded Access to Primary Care (Article 2 (commencing with Section 124900) of Chapter 7 of Part 4 of Division 106).
- (7) Birth Defects Monitoring Program (Chapter 1 (commencing with Section 103825) of Part 2 of Division 102).
- (8) Maternal and child health programs, including, but not limited to, Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 and as set forth in subdivision (c) of Section 27.
- (9) Special Supplemental Food Program for Women, Infants, and Children (Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106).
- (10) Perinatal Health Care (Article 4 (commencing with Section 123550) of Chapter 2 of Part 2 of Division 106).
- (11) Family planning services (Section 14503 of the Welfare and Institutions Code).
- (12) Hereditary Disorders Programs (subdivision (b) of Section 27).

(13) Other public health programs for the protection, preservation, and advancement of public health authorized pursuant to Section 100185 or pursuant to an annual Budget Act provision.

(b) "Department" means the State Department of Health Services.

*(Amended by Stats. 1996, Ch. 1023, Sec. 299. Effective September 29, 1996.)*

**38073.** The department shall comply with Sections 38030, 38031, 38032, 38035, and 38036, Chapter 3 (commencing with Section 38020) and Chapter 5 (commencing with Section 38040) of Division 25, and the grievance and appeal provisions set forth in Section 38036, Division 25.1 (commencing with Section 38050), and Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38074.** (a) Cooperative agreements shall be procured by means of a request for application or a request for proposal, whichever is applicable, as determined by the department.

(b) A procurement by a request for application is one where the department has funds, regardless of the source, that it seeks to distribute to those entities or organizations specified in Section 38072, that meet the criteria and standards stated in the request for application. A distinguishing feature of a request for application is that, unlike a request for proposal, a request for application is a request where multiple awards are to be made based on the information provided in the application and evaluated against the methodology and criteria specified in the request for application.

(c) All request for proposal cooperative agreement awards shall comply with the requirements of Section 10344 of the Public Contract Code.

(d) A cooperative agreement shall be for a period of up to three years.

(e) A cooperative agreement for a one-year period may provide for up to two annual extensions.

(f) A cooperative agreement may be procured without a request for application or a request for proposal under any of the following circumstances:

(1) If the amount of the cooperative agreement is less than fifty thousand dollars (\$50,000) annually. A nonprofit organization shall receive only one of these awards during each fiscal year.

(2) If the amount of the cooperative agreement is less than two hundred thousand dollars (\$200,000) a year and from a program that awards five or fewer grants per year.

(3) If the department is awarding a cooperative agreement under the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to an entity or organization that currently has an executed agreement with the specific WIC local agency. A cooperative agreement described in this paragraph may be awarded by means of subvention. Cooperative agreements for new or additional WIC local agencies shall be procured by means of a process that complies with applicable federal and state laws and the department's state plan for operation of WIC.

*(Amended by Stats. 2021, Ch. 143, Sec. 16. (AB 133) Effective July 27, 2021.)*

**38075.** The department, at its discretion, may enter into a single cooperative agreement with a single contractor based upon the contractor's applications submitted in response to requests for application from several programs.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38076.** In administering cooperative agreements, the program staff shall prepare all requests for proposals and requests for applications, evaluate the proposals and applications received, make the awards, and monitor progress of recipients of awards.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38077.** (a) The department shall use only one or more of the following payments systems for cooperative agreements:

(1) Allowable costs up to a maximum amount.

(2) Fixed payment per unit of service.

(3) Fixed monthly payment.

(4) Fixed price agreement.

(b) If the allowable cost payment system is used, the cooperative agreement shall contain a line item budget for the cooperative agreement project, and both of the following shall apply:

(1) Except as required by other funding sources, including, but not limited to, the federal government or private foundations, the line item budget shall specify aggregate costs for the following and no other categories:

(A) Personnel, including, but not limited to, salary, wages, and fringe benefits.

(B) Operating expenses, other than personnel, including, but not limited to, rent, depreciation, use allowance, supplies, utilities, and other operating costs.

(C) Capital expenditures to be paid for by the cooperative agreement.

(D) Other costs as specified in the agreement.

(E) A fixed indirect cost amount or rate.

(2) A nonprofit organization or unit of state or local government that is a party with the department in a cooperative agreement may propose, in writing, scope of work revisions or changes. The contractor shall be notified in writing within 30 calendar days when proposed revisions are approved or disapproved by the department. If written notification does not occur within this time period, the proposed revisions or changes shall be deemed approved.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38077.3.** (a) The department shall develop uniform cooperative agreement formats containing standardized agreement language. Each uniform format shall be developed with the participation of the affected parties. The purpose of the uniform formats shall be to consolidate and simplify administrative and programmatic requirements, maintain systemwide consistency, develop procedures that promote ease of use by clients, streamline processes, eliminate unnecessary paperwork, and ensure fiscal accountability. Uniform formats shall be outcome oriented and conducive to the business and operational needs of all parties to the extent practical.

(b) For purposes of this section "standardized agreement language" means language that constitutes terms and conditions of performance necessitated by sound contract management and compliance practices, including, but not limited to, payment and invoicing systems and procedures, record management requirements, and programmatic reporting requirements. Excluded from this definition are scopes of work, line item budgets, funding related provisions, preprinted generic exhibits, and cancellation or amendment clauses.

(c) The department may form working groups including representatives of all affected parties to implement this section.

(d) After finalization of uniform cooperative agreement formats, no unilateral change to standardized agreement language may be implemented without making the changes available for public comment. These changes include changes caused by programmatic decisions, control agency requirements, and administrative needs.

(e) Nothing in this section shall be construed to prevent or delay changes necessitated by state or federal statute or regulations.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38078.** All of the following shall apply to cooperative agreements:

(a) The department or contractor may terminate, upon a minimum of 30 days written notice, any cooperative agreement.

(b) The department may reject a request for proposal or a request for application response based on an entity's or organization's failure to comply with contracted requirements in prior contracts or cooperative agreements with the department.

(c) The organization or unit of state and local government shall be liable to return any funds for failure to comply with the requirements of the cooperative agreement.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38078.5.** (a) A cooperative agreement involving the purchase of electronic data processing hardware, software, or services, or telecommunication goods and services, up to a purchase amount of fifty thousand dollars (\$50,000), shall be exempt from Chapter 3 (commencing with Section 12100) and Chapter 3.5 (commencing with Section 12120) of Part 2 of Division 2 of the Public Contract Code, and from Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code.

(b) A cooperative agreement with a unit of local or state government that requires the purchase of capital equipment shall utilize the contractor's existing procurement systems for the purchase of equipment.

(c) A cooperative agreement with a nonprofit organization that provides for capital expenditures as part of a line item budget shall utilize a procurement system for the purchase of equipment under a cooperative agreement that meets the following standards:

(1) The nonprofit organization shall maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.

(2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open and free competition.

(3) Procurements shall be conducted in a manner that provides for all of the following:

(A) Avoidance of the purchasing of unnecessary or duplicate items.

(B) Solicitation for capital expenditures based upon a clear and accurate description of the technical requirements of the capital goods to be procured.

(C) The taking of positive steps to utilize small, minority, women, or veteran owned businesses.

(d) Notwithstanding subdivisions (a), (b), and (c), the Director of General Services may exempt from those requirements any purchases in excess of fifty thousand dollars (\$50,000) annually of capital equipment, and electronic data processing and telecommunications goods and services made under a cooperative agreement for which, in his or her judgment, the exemption is appropriate and in the best interests of the state. Written notice of an exemption shall be given to the Controller.

(e) Subdivision (a) shall become inoperative on June 30, 1997.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38079.** (a) All cooperative agreements, regardless of the size of the contracting nonprofit organization, are subject to the late payment provisions in Section 927.6 of the Government Code.

(b) In implementing this division, the department shall have the authority of, and be subject to, the provisions set forth in Chapter 2 (commencing with Section 124475) of Part 4 of Division 106, except that those provisions apply to all cooperative agreements, not only those agreements with clinics. However, notwithstanding Section 124500, moneys in the Clinic Revolving Fund of the State Department of Health Services shall be used for purposes of this division only upon appropriation of funds by the Legislature for that purpose.

*(Amended by Stats. 2000, Ch. 776, Sec. 3. Effective September 27, 2000.)*

**38080.** When the department awards a cooperative agreement pursuant to Section 38074, prior to execution of the agreement, the department may do the following:

(a) Certify to the Controller that a cooperative agreement has been awarded, the name of the organization or agency to which the award has been made, the amount approved by the department for funding the cooperative agreement, and any other information as may be required by the Controller.

(b) Present a claim to the Controller for payment to the organization or agency, from an appropriation available for such purpose, of an amount not exceeding 25 percent of the funding approved for the cooperative agreement.

*(Added by Stats. 1993, Ch. 1033, Sec. 1. Effective January 1, 1994.)*

**38081.** (a) Provisions shall be included in any invitation for bid or request for proposal issued and in any contract executed on or after January 1, 1996, in an amount that exceeds two hundred fifty thousand dollars (\$250,000) by the State Department of Health Services, to permit the substitution of securities for any moneys withheld to ensure performance under a service or consulting service contract, provided that substitution of securities provisions shall not be required where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the state department, or with a state or federally chartered bank in California as the escrow agent, who shall then pay the moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the state department shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the state department, pursuant to the terms of this section. The contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the contractor.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the state department.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in an affected contract.

*(Added by Stats. 1994, Ch. 635, Sec. 2. Effective January 1, 1995.)*

**38081.1.** (a) Cooperative agreements shall be subject to review and approval by the Department of General Services pursuant to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except as follows:

(1) Changes in the scope of work approved under paragraph (2) of subdivision (b) of Section 38077.

(2) For allowable cost agreements, changes in line item budgets of up to 15 percent of the annual total, not to exceed one hundred thousand dollars (\$100,000), so long as the contract total does not increase or decrease. This maximum amount shall be assessed annually and automatically adjusted in accordance with cost-of-living indexes.

(3) Agreements, and amendments to those agreements, under programs expressly exempted from the review and approval of the Department of General Services pursuant to statute, including, but not limited to, those exemptions granted prior to January 1, 1994.

(b) (1) A nonprofit organization or governmental agency that is awarded a cooperative agreement shall not be subject to the minority and women business and disabled veterans participation goals set forth in Article 1.5 (commencing with Section 10115 of Chapter 1 of Part 2 of Division 2 of the Public Contract Code with respect to that portion of the cooperative agreement budget that is for personnel related costs of the cooperative agreement, as determined by the department.

(2) A nonprofit organization or governmental agency that is awarded a cooperative agreement shall also be exempt from the participation goals described in paragraph (1) when the cooperative agreement meets any of the following criteria:

(A) The amount of the cooperative agreement is one hundred thousand dollars (\$100,000) or less annually.

(B) In the case of a nonprofit organization, the nonprofit organization to be awarded the cooperative agreement has a board of directors of which at least 51 percent of the members are any combination of women, minorities, and disabled veterans.

(C) Cooperative agreements that result from requests for application.

(c) The Director of General Services may exempt from his or her approval or from approval of the department any cooperative agreements for which, in his or her judgment, the exemption is appropriate and in the best interests of the state. Written notice of an exemption shall be given to the Controller.

(d) Subdivision (b) shall become inoperative on June 30, 1997.

*(Amended by Stats. 2002, Ch. 386, Sec. 6. Effective January 1, 2003.)*