STATE

MIGRANT

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FUNDING TERMS AND CONDITIONS

AND

PROGRAM REQUIREMENTS

for

CHILD DEVELOPMENT PROGRAMS

FISCAL YEAR 2003-04

STATE MIGRANT CHILD CARE AND DEVELOPMENT PROGRAMS
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FUNDING TERMS AND CONDITIONS
STATE BASED MIGRANT PROGRAMS
Fiscal Year 2003-04

These are the Funding Terms and Conditions (FT&C) for fiscal year 2003-04. Each contractor is required, as a condition of its contract with the California Department of Education (CDE), Child Development Division (CDD), to adhere to these FT&C, and any other requirements incorporated into the contract, in addition to all other applicable laws and regulations. Any variance from this contract, the FT&C, requirements, laws or regulations could be considered a noncompliance issue and subject the contractor to possible termination of the contract.

Any change of these FT&C or requirements that are binding on the State and the contractor must be in writing, in advance, from the CDE in the form of a formal contract amendment. Any interpretation of the FT&C or Requirements must be in writing from the CDE and signed by the director of the CDD.

Contractors may adopt any reasonable policies relating to the program that are not in conflict with law, regulations or the terms of this contract. Those potentially affected shall be duly notified and due process, if applicable, shall be assured.

I. DEFINITIONS

As used in the FT&C:

"Actual and allowable net costs" means the costs which may be reimbursed under a particular child development contract after disallowed costs and restricted income have been subtracted from total expenditures.

"Additional funds" means award of new contracts or expanded contracts which increase the contractor's level of administrative responsibility. Cost of living adjustments, rate increases and one-time-only supplemental funds are not considered to be "additional funds."

"Adjusted child days of enrollment" means child days of enrollment after special needs adjustment factors specified in Education Code Section 8265.5 and part-day adjustment factors specified in Education Code Section 82661.1 have been applied.

"Administrative costs" means costs incurred for administrative activities where neither the family nor the child directly benefit from the activity.

"Adult" means a person who is at least eighteen (18) years of age.

"Approved indirect cost plan" means that the annual agency audit does not include any management findings regarding the development or the application of the plan.

"Authorized representative" means a person who has been delegated the responsibility to sign a child in and out of a child care program in the absence of the parent.

"Benefit to the State" means that the activity will improve knowledge or expertise in areas directly related to subsidized child care and development services.

"Ceases operation" means the contractor does not provide subsidized services in accordance with the contractor's program operating calendar submitted to and approved by the CDD for the applicable contract period.

"Child development fund" means the restricted fund used by the contractor to account for contract funds and related net reimbursable program costs.

"Commingled child care services" means the provision of services to both subsidized and nonsubsidized children in the same classroom at the same time.

"Contract period" means the time span the contract is in effect as specified in the child development contract.

"Depreciation" means a cost in the current fiscal year that is based on acquisition costs, less any estimated residual value, computed on a straight line method (based on the normal, estimated useful life expectancy of the asset).

"Disallowed costs" means costs which have been incurred but are not reimbursable because they are not reasonable and/or necessary for the performance of the contract as defined below or are otherwise nonreimbursable as specified in Section V.G below.

"Employment agreements" means the formal hiring documents for individuals who will accrue benefits normally afforded to contractor's staff.

"Full signature" means the legal signature of the individual (e.g., signature normally used on checks and other documents). If the individual is not literate in written English, the individual may sign with an "X" which must be initialed by the contractor's authorized representative.

"Indirect cost" means an expense that cannot be readily assigned to one specific program or one specific line item within a program.

"Indirect cost allocation plan" means a written justification and rationale for assigning the relative share of indirect costs across more than one program or contract.

"Maximum reimbursable amount" means the total dollar amount of a contract. Reimbursement from the State shall not exceed the maximum reimbursable amount.

"Net reimbursable program costs" means the portion of the actual and allowable net costs which are incurred in the provision of child care and development services for subsidized children.

"New contract" is a contract award to an existing contractor which is for a program type as specified in Education Code Section 8208(h) that is different than the child development contract(s) currently administered by the applicant.

"Private contractor" means an entity other than a public agency which is tax exempt or non-tax exempt and under contract with the CDE for the provision of child care and development services.

"Public contractor" means a school district, community college district, county superintendent of schools, campus of the California State University or the University of California system, county, city or other public entity under contract with the CDE for the provision of child care and development services.

"Reasonable and necessary costs" means expenditures that, in nature and amount, do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business.

"Regional Market Rate" means the current rate charged for various types of child care services as determined by a survey of providers.

"Restricted income" means income which may only be expended for specific limited purposes.

"Service delivery area" means the community, geographic area or political subdivision in which the child care and development services are to be provided as specified in the Request for Applications.

"Total expenditures" means all costs for the provision of subsidized services under the contract and any nonsubsidized services which are provided in commingled classrooms.

"Unnecessarily increase the value" means an improvement of a site beyond what is required to meet Title 22 California Code of Regulations, Community Care Licensing Standards.

"Use allowance" means an alternate method for claiming the use of the contractor's assets as a cost when depreciation methods are not used.

II. GENERAL PROVISIONS

A. National Labor Relations Board/Federal Court Order

By signing this contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court has been issued by a federal court against the contractor within the last two (2) years because of failure to comply with a federal court order for compliance with an order of the National Labor Relations Board (Public Contract Code Section 10296). This provision does not apply to public entities.

B. Notification of Address Change

Contractors shall notify the CDD in writing of any change in mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied with (1) board minutes verifying the change in address and (2) a copy of the notification to the Internal Revenue Service of the address change.

Contractors shall notify the CDD in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood or earthquake.

C. Open Board Meetings

Private contractors, to the extent of the publicly funded program, comply with the Ralph M. Brown Open Meetings Act ("Brown Act"), Government Code Sections 54950-54961. Board meetings shall be open to the public except for meetings with its designated representatives prior to and during consultations and discussions with representatives of employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees or to consider the appointment, employment, evaluation of performance or dismissal of an employee or to hear complaints or charges brought against an employee unless such employee requests an open meeting. Minutes of these open meetings shall be available to the public.

D. Compliance with Title 22 California Code of Regulations

Contractors with facilities which are exempt by statute or otherwise exempt from licensure shall comply with health and safety regulations for day care centers and family child care homes as specified in Title 22 California Code of Regulations, Community Care Licensing Standards in order to qualify for child care and development program contract funds.

E. Issuance and Use of Checks

Except for external payroll services, private contractors shall not use any presigned, pre-authorized, or pre-stamped checks without the prior written approval of the CDD.

Private contractors shall require two (2) authorized signatures on all checks unless: (1) the contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount and (2) the annual audit verifies that appropriate internal controls are maintained.

F. Prohibition Against Loans and Advances

Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies. Contractors shall not advance unearned salary to employees. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received except for (1) subcontractors providing direct child care and development services and (2) subcontractors with subcontracts exempt from the provisions of Section IV.A below.

G. Materials Developed with Contract Funds

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the child development program. If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development program shall be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of State funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

H. Prohibition Against Religious Instruction or Worship

The contractor shall not provide nor be reimbursed for child care and development services which include religious instruction or worship.

I. Payments to Family Child Care Providers

Contractors who operate through family child care homes shall pay each non-employee family child care provider the same rate(s) the provider charges nonsubsidized families.

For non-employee family child care providers that do not serve nonsubsidized children, the contractor shall pay a rate that is within 1.5 standard deviations of the mean market rate for family child care homes as established by the most recent "Regional Market Rate Survey of California Child Care Providers."

J. Contracts with Multiple Service Areas

A contractor with more than one service delivery area as specified in and funded through a single contract shall maintain service at the same level, plus or minus ten percent (10%) of the contracted child days of enrollment in the individual service area(s) specified in its current contract.

The contractor may request approval from the CDD to vary service levels by more than ten percent (10%) if the contractor can demonstrate that the need for services in the designated area(s) has changed. The CDD shall approve or deny the request within thirty (30) calendar days of receipt of the request. If the request is denied, the contractor may appeal this decision in accordance with Section X below.

K. Contractor's Termination for Convenience

1. General Termination for Convenience

A contractor may terminate the contract for any reason during the contract term. The contractor shall notify the CDD of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

Within fifteen (15) days from the date the contractor notifies the CDD of its intent to terminate the contract, the contractor shall submit: (1) a current inventory of equipment purchased in whole or in part with contract funds and (2) the names, addresses and telephone numbers of all families served by the contract and all staff members funded by the contract. Contractors providing services through family child care homes shall also submit the names, addresses and telephone numbers of all providers of subsidized services funded by the contract.

Upon receipt of a notice of intent to terminate, the CDD will transfer the program to another agency as soon as practicable.

The State shall only be obligated to compensate the contractor for net reimbursable program costs in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The State shall offset any monies the contractor owes the State against any monies the State owes under this contract.

2. Changes in Laws or Regulations

The CDD shall notify contractors in writing of changes in laws or regulations prior to the effective date or as soon as possible after enactment. If any laws or regulations are changed substantially during the contract period, the contractor shall have the option to discontinue performance and be relieved of all obligations for further performance.

The contractor has thirty (30) calendar days from receipt of notification of pending changes to notify the CDD in writing of the contractor's intent to terminate if the required changes are unacceptable to the contractor. The contract shall be deemed terminated sixty (60) calendar days after receipt of the notification of the intent to terminate.

L. Compliance Reviews of Contractors

At least once every three (3) years and as resources permit, the CDE shall conduct reviews at the contractor's office(s) and operating facility(ies) to determine the contractor's compliance with applicable laws, regulations or contractual provisions.

The reviews shall be conducted by consultants, analysts and/or management staff of the CDD, CDE's Audits & Investigations Division (A&I), Formerly Office of External Audits, and Child Development Fiscal Services (CDFS), formerly Education Finance Division (EFD), or other State of California representatives.

M. Eligibility for Funding

A contractor is not eligible for additional funds, as defined in Section I above, if the contractor has received final notification, as specified in Section VIII.A below, that its contract has been terminated.

A contractor is not eligible for additional funds if the contractor has demonstrated fiscal and/or programmatic noncompliance and has received final notification, as specified in Section IX.A below, that (1) its contract will be placed on conditional status or (2) it will not be offered continued funding.

N. Continued Funding

Contractors have no vested right to a subsequent contract. Contractors that are not on conditional contract status but which have evidenced fiscal or programmatic noncompliance with the provisions of this contract, law or regulations shall receive an administrative review in accordance with Section IX.A below to determine whether they will receive an offer for continued funding.

Contractors currently on conditional status that do not meet the requirements specified in the Conditional Status Addendum, as specified in Section IX.C below, may not be offered a subsequent contract and shall be so notified by the CDD at least ninety (90) calendar days prior to the end of the current contract period.

Contractors that intend to accept the offer to continue services in the subsequent contract period shall respond to a continued funding application request from the CDD in accordance with the instructions and timelines specified in the request. Failure to respond within the timelines specified in the continued funding application request shall constitute notification to the CDD of the contractor's intent to discontinue services at the end of the current contract period unless the contractor has received a written extension of the original timeline from the CDD.

O. Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the Corporations Code including standards of conduct and management of the organization.

P. Conflicts of Interest

For any transaction to which the contractor is a party and the other party is: (a) an officer or employee of the contractor or of an organization having financial interest in the contractor; or (b) a partner or controlling stockholder or an organization having a financial interest in the contractor; or (c) a family member of a person having a financial interest in the contractor, the transaction(s) shall be fair and reasonable and conducted at arm's length.

Based on corporate law (Corporations Code sections 310, 5233-5234, 7233 and 9243 as applicable) the general rules that would be followed to ensure that transactions are conducted "at arm's length" include: (1) prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed and (2) all parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.

If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance. Any transaction described in this paragraph shall be disclosed by the auditor in the notes to the financial statement in the annual audit.

Rental costs for equipment owned by affiliated organizations, officers or other key personnel of the contractor or their families are allowable only as use or depreciation allowance.

Q. Americans with Disabilities Act

By signing this contract, the contractor assures the CDE that it shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) as well as all applicable federal and state laws and regulations, guidelines and interpretations issued thereto.

R. Air or Water Pollution Violations (Government Code Section 4477)

By signing this agreement, the contractor swears under penalty of perjury that the contractor is not: (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 a 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. This provision does not apply to public agencies.

S. Recycled Paper Certification (Public Contract Code Section 10308.5/10354)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Public Contract Code Sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content.

T. Child Support Compliance (Public Contract Code Section 7110)

By signing this agreement, the contractor acknowledges that (a) it 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)to the best of its knowledge it 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.

U. Unlawful Denial of Services (Government Code Section 11135)

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described in paragraph (1).

V. Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

W. Union Organizing and Activities

Contractor by signing this agreement hereby acknowledges the applicability to this agreement of Government Code Section 16645 through Section 16649.

1. Contractor will not assist, promote or deter union organizing by employees performing work on a state service contractor, including a public works contract.

2. No state funds received under this agreement will be used to assist, promote or deter union organizing.

3. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

4. If the contractor incurs costs or makes expenditures to assist, promote or deter union organizing, the contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs. The contractor shall provide these records to the Attorney General upon request.

Contractor hereby certifies that no request for reimbursement or payment under this agreement will seek reimbursement for costs incurred to assist, promote or deter union organizing.

III. FACILITIES AND EQUIPMENT

A. Depreciation and Use Allowance

Taxes, insurance and maintenance may be claimed as part of actual and allowable costs for buildings, building improvements related to the child development program and equipment necessary for the operation of the program. Within the limits specified below, depreciation or use allowance may also be claimed. Depreciation shall not be claimed on land, donated assets or assets purchased with public funds, on any fully depreciated asset or on idle or excess facilities. A use allowance shall not be claimed on land or assets purchased with contract funds or on assets for which depreciation has been claimed.

Depreciation is a cost in the current fiscal year based on acquisition costs, less any estimated residual value, computed on a straight line method from the original date of acquisition (based on the normal, estimated useful life expectancy of the asset). When depreciation is applied to assets acquired in prior years, the annual charges shall not exceed the amounts that would have resulted had depreciation been claimed from the date of acquisition.

A use allowance is the alternate method for compensation when depreciation costs are not claimed. The use allowance for buildings and improvements is computed at an annual rate not to exceed two percent (2%) of acquisition costs. The use allowance for equipment is computed at an annual rate not to exceed six and two-thirds percent (6-2/3%) of acquisition costs.

B. Capital Outlay

Capital outlay expenditures are those that result in the acquisition of or additions to capital assets. Capital outlay expenditures are subdivided into two categories: (1) sites and improvement of sites; buildings; improvement of buildings; building fixtures; and services systems; and (2) equipment which includes personal property of a relatively permanent nature and/or of significant value. (See the California School Accounting Manual for categorization of various items.) Capital outlay expenditures for category (1) are reimbursable as depreciation or use allowance. Capital outlay expenditures for licensable facilities in the community served by the program are reimbursable as lease payments, down payment, payments of principal and interest on loans incurred to acquire, rehabilitate or construct licensable facilities as long as the costs do not exceed fair market rents existing in the community in which the facility is located. In addition, to be reimbursable, interest paid on private sector debt for the purchase, lease-purchase, repair or renovation of child care and development facilities owned or leased by contractors providing center-based care must not exceed the value obtained by the state in the use of the facilities for the child care and development program during the year.

C. Equipment Bidding and Approval Requirements

All equipment purchases in excess of seven thousand five hundred dollars ($7,500) per item (including tax) shall be approved in writing in advance by the CDD. In determining if an equipment purchase exceeds the threshold, all expenses associated with a purchase that are necessary for it to perform the intended purpose should be included in calculating the purchase cost. Example: A computer system could include but is not limited to individual items such as a central processing unit (CPU), computer monitor, computer stand, modems, disk drives, software, printer, etc. or hardware and software to install a local area network (LAN) system; and

For private agencies, all equipment purchases exceeding five thousand dollars ($5,000) will not be approved unless at least three (3) bids or estimates have been obtained. The contractor shall purchase the goods or services from the lowest responsible bidder. If three (3) bids or estimates cannot be obtained, the contractor shall provide adequate documentation of the reason(s) why three (3) bids or estimates could not be obtained (e.g., emergency situations).

Public agencies shall comply with applicable sections of the Public Contract Code. Bids, if applicable shall be attached to the Request for Approval of Capital Outlay Expenditures when submitted to the CDD for approval. One copy of the Request shall be retained by the CDD and one copy returned to the contractor approved or disapproved within thirty (30) calendar days of receipt. If the request for approval of an equipment purchase is disapproved, the contractor may appeal the decision in accordance with instructions specified in Section X below.

Equipment replacement and lease-purchase agreements are subject to the above requirements. An inventory of all equipment shall be maintained.

D. Equipment Inventory

Property records must be maintained that include a description of the equipment, serial number or other identification number, the source of the equipment, the acquisition date, the cost of the equipment, the location, use and condition of the equipment and any ultimate disposition date including date of disposal and sale price if applicable. A physical inventory of equipment must be taken at least every two years and reconciled with property records. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

E. Title, Use, Disposition and Retention of Equipment

1. Title. When equipment is purchased with State funds, title shall vest in the contractor only for such period of time as the contractor has a contract with the CDE.

2. Retention of Equipment. The CDD may provide written authorization for the contractor to retain the equipment for the contractor's own use if a fair compensation is paid to the State for the State's share of the cost of the equipment. Fair compensation shall be determined by the State using the State's share of original acquisition cost, less depreciation, computed on a straight-line method over the estimated useful life expectancy of the equipment.

3. Use. When equipment is purchased in whole or in part with State funds, the contractor shall use the equipment exclusively in the program(s) from which funds were used to purchase the equipment. If the contractor wishes to share the use of the equipment between/among two (2) or more programs, the cost of such equipment shall be prorated between/among the programs.

4. Disposition. If the contractor no longer has a contract with the CDE, the contractor shall dispose of the equipment in accordance with written directions from the CDD.

E. Renovation and Repair

Improvement of sites and adjacent grounds to meet or continue to meet Title 22, California Code of Regulations, and Community Care Licensing Standards is reimbursable if the improvements do not unnecessarily increase the value (as defined in Section I above) of a facility <u>and</u> the contractor has obtained prior CDD approval for proposed work for ten thousand dollars ($10,000, including tax) or more.

For private agencies, such proposed work in excess of five thousand dollars ($5,000, including tax), unless performed by contractor's staff, shall have at least three (3) bids or estimates and shall be awarded to the lowest responsible bidder. Bids, if applicable, shall be submitted by the contractor when requesting CDD approval. If three (3) bids or estimates cannot be obtained, the contractor shall maintain adequate documentation of the reason(s) why three (3) bids or

estimates could not be obtained as well as the reasonableness of cost in the absence of competition. Public agencies shall comply with applicable sections of the Public Contract Code.

Proposed work for ten thousand dollars ($10,000, including tax) or more shall be submitted for prior written approval to the CDD. If three (3) bids were not obtained, the contractor shall submit written justification to the CDD at the time approval is requested. The CDD shall approve or disapprove the request within thirty (30) calendar days. If the request is disapproved, the contractor may appeal the decision in accordance with instructions specified in Section X below. If the work is to be performed through a subcontract, the requirements of Sections IV.B through IV.F also apply. When private agencies submit proposed subcontracts for renovation and repair for approval, evidence shall be included that the proposed subcontractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.

IV. SUBCONTRACTS

A. Subcontracts Excluded from Requirements of this Section

The following types of relationships are not subject to the requirements contained in Section IV: (1) employment agreements; (2) facility rental or lease agreements; (3) payment arrangements with family child care homes; (4) medical or dental service agreements; (5) bookkeeping/auditing agreements, except for Section IV.B; (6) food services agreements; (7) janitorial and groundskeeping agreements; (8) a subcontract with a public agency; and (9) subcontracts with an individual for less than ten thousand dollars ($10,000), except for Section IV.B.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

All subcontracts, rental agreements and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

B. Bids for Subcontracts

Private contractors shall obtain at least three (3) bids or estimates for subcontracts that exceed five thousand dollars ($5,000). The subcontract shall be awarded to the lowest responsible bidder. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents in its records that establish the reasons why three (3) bids or estimates could not be obtained; and (2) the reasonableness of the proposed expenditure without three (3) bids or estimates. Subcontracts subject to the approval of the CDD shall be rebid at least once every three (3) years or more often if specified by the CDD in its annual approval of the subcontract. Public agencies shall award subcontracts in accordance with the Public Contract Code. The contractor shall not split subcontracts to avoid competitive bidding requirements.

Subcontracts for direct child development services between a public agency contractor and a private subcontractor are exempt from bidding but <u>not</u> advance approval by the CDD if they are for ten thousand dollars ($10,000) or more.

Subcontracts for auditing and/or bookkeeping services shall be rebid and changed every five (5) years unless retention of the same auditor is approved by the OEA.

C. Prior Child Development Division Approval

If directed by the CDD, contractors shall obtain prior written approval from the CDD for subcontracts for ten thousand dollars ($10,000) or more that are not excluded from the provisions of this Section by Section IV.A above.

Prior to execution of a subcontract and commencement of work, the contractor shall submit two (2) copies of the proposed subcontract to the CDD for approval, including a proposed line-item budget which shows the costs of the services to be performed. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Bids, if applicable, shall be submitted to the CDD when requesting approval. If three (3) bids were not obtained, the contractor shall provide written justification when the subcontract is submitted to the CDD for prior approval. Contractors shall demonstrate that approval of the subcontract is cost effective to the State. For proposed renovation and repair subcontracts, private agencies shall include documents showing that the bidder selected by the contractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract. Requests for approval of subcontracts for transportation services shall include a Certificate of Insurance for the subcontractor in an amount not less than $1 million per occurrence (or a greater amount if required by the Public Utilities Commission regulations), listing the contractor and the State as additional named insured.

One copy of the subcontract will be retained by the CDD and the other copy returned to the contractor approved or disapproved within thirty (30) calendar days of receipt of all required documents. No reimbursement shall be made to the contractor or subcontractor for work performed prior to CDD approval. A disapproved contract will include a statement of the reason(s) for not approving the subcontract. If the request for approval of a subcontract is denied, the contractor may appeal the decision in accordance with instructions specified in Section X below.

The State does not assume any responsibility for performance of approved subcontracts nor does the State assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.

Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are nonreimbursable.

D. Required Subcontract Provisions

Every subcontract shall specify:

1. The dates within which the subcontractor is to perform the contract. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the State.

2. The dollar amount of the subcontract or specify an amount not to exceed a maximum dollar amount.

3. The service(s) to be provided under the subcontract.

4. The responsibilities of each party under the subcontract.

5. That the subcontractor, and the agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers or employees or agents of the State of California.

6. That modifications of the subcontract shall be in writing, and that for subcontracts in excess of the amount stated in the annual child development contract, prior written CDD approval is required unless the subcontract is otherwise exempt from prior CDD approval.

7. That the subcontract is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.

8. Remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars ($10,000).

9. That the State of California retains title to any equipment or supplies purchased with State funds and that the equipment shall be returned to the contractor upon termination of the subcontract. The subcontract shall also specify that the subcontractor shall obtain prior written approval from the contractor and the CDD for any unit of equipment that costs in excess of seven thousand five hundred dollars ($7,500).

10. That the subcontractor shall be reimbursed for travel and per diem expenses only at rates that do not exceed the rates paid to the CDE's represented employees computed in accordance with State Department of Personnel Administration regulations, Title 2 California Code of Regulations, Subchapter 1.

11. That the subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm or corporation that may be injured or damaged by the subcontractor in the performance of the subcontract.

12. For management and/or direct service subcontracts, the subcontractor shall maintain records for program review, evaluation, audit and/or other purposes and make the records available to agents of the State for a period of five (5) years.

13. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in Title 2 California Code of Regulations, Chapter 5, Section 8107.

E. Recommended Subcontract Provisions

The following items are suggested for inclusion in subcontracts to protect the interests of the contractor:

1. Funding of the subcontract should be made subject to the appropriation and availability of funds from the State.

2. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.

3. The subcontract should provide that the subcontractor, its agents and employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.

4. Unless exempted from CDD approval above, subcontracts for ten thousand dollars ($10,000) or more cannot become effective and binding on either the prime contractor or the subcontractor until approved in writing by the CDD, and any work performed by the subcontractor prior to the date of such approval shall not be used as a claim against the State.

5. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.

F. Audit Requirements for Subcontracts

Subcontracts for management and/or direct services shall be audited in accordance with CDE Audit Guidelines. The cost of the audit shall be reimbursable and shall be borne by the contractor either directly or as an allowance in the subcontract. The audit of the subcontract shall be submitted to the CDE's A&I along with the contractor's audit as specified in Section VI.I below.

V. COSTS, EARNINGS AND REIMBURSEMENT

A. Reasonable and Necessary Costs

Contractors will be reimbursed for actual costs that are reasonable and necessary to the performance of the contract as defined in Section I above.

B. Indirect Costs

If indirect costs are claimed, an indirect cost allocation plan must be on file with the contractor and available for review by the CDD and auditors. The maximum indirect cost rate is eight percent (8%). This rate is applied to budget categories 1000-5000 only in determining the maximum amount of indirect costs that are reimbursable under the contract. School districts and county offices of education shall use the CDE approved rate if it is less than eight percent (8%).

The amount of cost allocable to this contract shall not exceed the benefits to this contract. The allocation method must quantify this benefit among all similar programs and then distribute the costs accordingly.

The indirect cost rate shall not include consideration of any costs otherwise nonreimbursable. If a depreciation or use allowance is included in the indirect cost rate, such allowance shall not be claimed on the asset.

C. Administrative Costs

Contractors may claim administrative costs as defined in Section I above which are directly related to the provision of child care and development services. Reimbursement of administrative costs shall not exceed fifteen percent (15%) of net reimbursable program costs or actual administrative costs, whichever is less. The fifteen percent (15%) includes any allowance for indirect costs and audits. Contractors shall maintain written documentation of the rationale used in determining direct and administrative costs.

D. Service Level Exemption (Start-Up/Close-Down Costs)

Allowable start-up costs include employment and orientation of necessary staff; setting up of the program and facility; finalization of rental agreements and necessary deposits; purchase of a reasonable inventory of materials and supplies; and purchase of an initial premium of insurance. Contractors shall maintain an auditable record of start-up costs and closedown costs which shall be included within the audit at the end of the year. Reimbursable start-up costs shall occur prior to attainment of full enrollment. The aggregate of both start-up and closedown costs shall not exceed fifteen percent (15%) of the MRA. If all or part of the fifteen percent (15%) allowable start-up and closedown costs is needed and spent, that portion will not have to be "earned" through provision of services. If, however, the contractor neither needs nor chooses to claim any of the fifteen percent (15%) start-up or closedown costs, the full service requirements

shall be earned at the contract rate.

Contractors shall report start-up costs on the first monthly report after opening of the facility and closedown costs in the final report.

E. Costs for Travel and Per Diem

Contractors and subcontractors shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to the CDE's represented employees computed in accordance with State Department of Personnel Administration regulations, Title 2 California Code of Regulations, Subchapter 1. Contractors with collective bargaining agreements allowing higher rates of reimbursement shall not pay the difference out of contract funds. The CDD shall notify the contractor of a change in expense rates within thirty (30) calendar days after the CDD has received notification of a change in rates from the State Department of Personnel Administration.

Contractors shall be reimbursed for out-of-state travel expenses only with prior written approval from the CDD. The CDD shall not approve out-of-state travel expenses: (1) for more than one employee per contract per year; (2) for contractors with delinquent accounts payable which are delinquent more than ninety (90) calendar days after the date of the original invoice; (3) for contractors on conditional status; (4) when there is no clear benefit to the State; or (5) when the benefit to the State can be obtained within California.

The CDD shall approve or deny the request for out-of-state travel within thirty (30) calendar days of the receipt of the request. If the request is denied, the contractor may appeal the decision in accordance with instructions specified in Section X below.

F. Specific Items of Reimbursable Costs

Reimbursable costs include, but are not limited to, the following:

1. Start-up costs as specified in Section V.D above.

2. Close-down costs as specified in Section V.D above.

3. Administrative costs as specified in Section V.C above.

4. Employee compensation, including fringe benefits, and personal service contracts.

5. Equipment and equipment replacement with prior CDD approval if required in Section III.C above.

6. Improvement of sites and adjacent grounds to meet or continue to meet Title 22 California Code of Regulations, Community Care Licensing Standards in accordance with Section III.E above.

7. Taxes, insurance, and maintenance for buildings and/or equipment.

8. Depreciation based on the useful life of an asset in accordance with Section III.A above.

9. A use allowance for buildings and improvements in accordance with Section III.A above.

10. Travel and per diem expenses, including approved out-of-state travel, in accordance with Section V.E above.

11. An indirect cost rate based on an approved indirect cost plan, in accordance with Section V.B above.

12. Lease payments or depreciation and payments of principal and interest on loans incurred to acquire, rehabilitate or construct licensable facilities not to exceed fair market rents in the community in which the facility is located in accordance with guidelines issued by the CDE.

13. Interest on private sector debt financing for purchase, lease-purchase, repair or renovation of child care and development facilities owned or leased for providing center-based care upon demonstration that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the child care and development program during the year in accordance with guidelines issued by the CDE.

G. Nonreimbursable Costs

The following costs shall not be reimbursable under the child development contract:

1. Bad debts, including losses arising from uncollectible accounts and any related legal costs. Uncollected parent fees are considered to be bad debts if documentation of collection attempts exists.

2. Contributions

3. Costs of amusement or entertainment

4. Costs of fines or penalties

5. Costs of idle facilities unless those costs are related to a partial year program and the costs of the idle facilities have been approved by the CDD

6. Costs incurred after the contract has been terminated

7. Fund raising costs except as specified in Section VII of the Program Quality Requirements

8. Consumer interest except: (a) interest on borrowed funds when apportionments are withheld because of a delay or error attributable to the State and the amount of interest claimed is approved by the CDD; (b) when interest is part of a lease purchase agreement; or (c) when the interest is part of payments on a loan incurred to acquire, rehabilitate or construct licensable facilities not to exceed fair market rents existing in the community in which the facility is located or (d) when the interest is on private sector debt financing for the purchase, lease-purchase, repair or renovation of child care and development facilities owned or leased by the contractor and it has been demonstrated that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the child care and development program during the year in accordance with guidelines issued by the CDE.

9. Investment management costs

10. Costs of organization of a nonprofit corporation such as incorporation fees or consultant fees

11. Public relations consultant fees

12. Costs of legal, consulting and accounting services incurred in prosecution of claims against the State

13. State and federal income taxes

14. Costs for the acquisition of sites and buildings except through depreciation unless the costs are for a licensable facility in the community served by the program and the costs do not exceed fair market rents existing in the community in which the facility is located in accordance with guidelines issued by the CDE.

15. Bonuses except if they are part of a collective bargaining agreement

16. Compensation to the members of the board of directors except for: (a) reimbursement for travel and/or per diem, computed in accordance with Section V.E above, incurred while the members are conducting business for the organization; and (b) as provided in the California Corporation Code Section 5227, et seq.

17. Costs of subcontracts which increase the contractor's cost or subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-costs.

18. Costs incurred in prior or future years

H. Charging of Expenditures

Net reimbursable program costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations. However, the cost of the annual independent audit may be claimed either in the contract period which was the subject of the audit or during the contract period in which the audit is completed.

I. Recoupment of Advanced Contract Funds

The CDE shall recoup any payments made for costs which were not reasonable and necessary. The amount that is recouped shall be the excess payment over the reasonable or fair market value, or one hundred percent (100%) of the cost, if the cost was not necessary. The CDE may elect to recover any costs of recoupment, including collection services or attorney fees.

J. Use of Subsidized Parent Fees

Fees received from subsidized parents are to be expended and earned by the contractor before contract funds shall be claimed for reimbursement. Such fees shall be expended on reimbursable costs and earned by providing child days of enrollment. In order to be reimbursed the full contract amount in addition to the fees received from subsidized parents, the contractor must have additional reimbursable expenditures and provide child days of enrollment beyond the minimum required by the contract at a rate equal to the lesser of the daily contract rate or the actual cost.

K. Determination of Reimbursable Amount

Contractors shall be reimbursed for an audited claim that is the least of the following:

1. The maximum reimbursable amount as stated in the annual child development contract

2. The net reimbursable program costs for contractors without a Reserve Account

L. Minimum Days of Operation

If the contractor fails to operate at least ninety eight percent (98%) of the minimum days of operation required in its contract, ceases operation or the contract is terminated prior to the end of the contract period, the maximum reimbursable amount shall be reduced in proportion to the percentage of the contract minimum days of operation that the contractor was not in operation.

M. Reduction, Withholding, and Cancelling Apportionments to Contractors

The CDE shall reduce, withhold or cancel any scheduled apportionment when one or more of the following conditions exist:

1. The contractor has not submitted an acceptable audit for any prior year of operation on or before the date due.

2. The contractor has not submitted the reports required by Section VI below on or before the date due.

3. The contractor will not earn the full contract amount based on the current year projected net reimbursable program costs as determined by the CDFS.

4. A creditor of the contractor has placed a lien on the contractor's scheduled apportionments.

5. The contractor has accounts payable which are: (a) more than ninety (90) days delinquent to the CDE and (b) not under appeal as specified in either Section VIII.A or Section X below.

If any apportionment is to be reduced, withheld or cancelled, the CDE shall provide the contractor prior written notice of the intended action.

N. Order of Expenditure

Expenditure from the Child Development Fund established pursuant to Section VI.B below shall occur in the following order:

1. Fees collected from parents of certified children shall be first in and first out.

2. State or federal contract funds apportioned by the CDE shall be second in and second out.

3. Interest received on advanced contract funds shall be last in and last out.

VI. ACCOUNTING AND REPORTING REQUIREMENTS

A. General Provisions

Contractors shall follow the applicable procedures specified in the most recent edition of the California School Accounting Manual. Contractors shall report expenditures on an accrual basis.

B. Child Development Fund and Interest Bearing Accounts

All contractors shall establish a fund to be known as the "Child Development Fund" as specified in Education Code Section 8328, except that private contractors shall establish the fund in a federally insured banking institution located in California. Contractors with multiple fund sources shall establish separate program cost accounts for each source of funds.

If a contractor places advanced contract funds in an interest bearing account, the interest bearing account shall be a separate account within the Child Development Fund. Interest earned shall be retained by the contractor if it is expended on reimbursable costs and earned by providing subsidized days of enrollment beyond the minimum required to earn the maximum reimbursable amount at a rate equal to the lesser of the daily contract rate or the actual program costs.

C. Enrollment and Attendance Accounting

A child shall not be enrolled in more than one program for the same time period on the same day.

Contractors shall use daily sign-in/sign-out sheets as a primary source document for audit and reimbursement purposes.

One of the following persons shall enter the time of arrival and departure on a sign-in/sign-out sheet and, except as specified below, and shall sign the sheet using their full signature: (1) the parent or other adult authorized by the parent to drop off/pick up a child or (2) the staff person designated by the contractor as the person responsible for entering the times of arrival and departure if the child is not dropped off/picked up by a parent or other adult authorized by the parent.

First and last initials of the contractor's authorized representative along with a notation of the time are required to document when a school-age child departs for and returns from school during the day.

D. Attendance and Excused Absences

Attendance, for the purposes of reimbursement, includes excused absences because of illness or quarantine of the child, illness or quarantine of their parent, family emergency, court ordered visitations or a reason which is clearly in the best interest of the child.

If the absence is claimed by the contractor as an excused absence, the attendance accounting records shall contain verification that includes: (1) the name of the child; (2) the date(s) of absence; (3) the specific reason for the absence; and (4) the signature of the parent or the contractor's authorized representative if verification is made by telephone.

If an excused absence is based on time spent with a parent or other relative as required by a court of law, the basic data file shall contain a copy of the Court Order.

Contractors shall adopt reasonable policies delineating circumstances that would constitute an excused absence for "family emergency" and "in the best interest of the child." Contractors shall also adopt a policy governing unexcused absences which may include reasonable limitations, if any. Contractors shall inform parents of these policies.

Except for children who are recipients of protective services or at risk of abuse or neglect, excused absences "in the best interest of the child" shall be limited to ten (10) days during the contract period.

E. General Recordkeeping Requirements

All records shall be retained for a minimum period of five (5) years. Claims for reimbursement shall not be paid unless there are documents to support the claims. The contractor has the burden of supporting claims for reimbursement.

Authorized representatives of the State shall be allowed access to all program related or fiscal records during normal work hours.

F. Attendance and Expenditure Reports

Contractors on conditional and provisional status shall report monthly (due to CDFS by the 20th of the following month). All other contractors shall submit four (4) cumulative fiscal reports to CDFS for the quarters ending September 30th, December 31st, March 31st, and June 30th. Reports not received in CDFS by the 20th of the month following the end of the contractor's reporting period shall be deemed delinquent and, in accordance with Section V.M above, apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDFS:

1. Days of enrollment and attendance for all children served in the program in the current reporting period and year to date

2. Total days of operation in the current reporting period and year to date

3. All services, revenues and expenditures for both subsidized and nonsubsidized children if nonsubsidized and subsidized children are commingled as defined in Section I above

4. Amount and sources of all revenues other than advanced contract funds for the current reporting period and the year to date total

5. Total expenditures related to the program operation for the current reporting period and the year to date total

The report shall include a certification that the information contained in the report is correct and complete and the original signature of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

G. Child Development Data Collection

The contractor shall submit the following:

1. Child Care Annual Aggregate Report (CDD-800) to the CDE by December 1 of each year.

2. Monthly Child Care Population Information (CDD-801A) electronically in accordance with instructions from the CDE.

If the contractor is selected and notified by mail to submit sample data, they must complete the Child Development Data Collection Sample Report (CDD-801B) electronically in accordance with the instructions from the CDE.

Contractors shall submit complete, accurate reports to the CDE by the date specified, and in the format specified in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required date shall be considered delinquent. Penalties for delinquent reporting are specified in Section V.M. above.

H. Other Report Data

Contractors shall submit statistical, cost and program data as requested by the CDE in order for the CDE to prepare various legislatively mandated reports, to meet state and federal reporting requirements and for the effective administration of child care and development programs.

Contractors submitting data to the CDE will include a certification that the data are correct and complete, and the signature of the person authorized by the contractor to certify the data. The signature may be electronic as specified by the CDE.

Contractors shall submit complete, accurate data to the CDE by the date specified, and as specified, in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required due date shall be considered delinquent. Penalties for delinquent reporting are specified in Section V.M above.

For the purpose of data collection and program management, contractors shall provide a copy of the Child Care Data Collection Privacy Notice and Consent Form (CD-9600A) to the head of the family unit at the time of enrollment and shall obtain a signed copy of that form indicating the head of household's decision whether to authorize or not authorize release of his or her social security number. Whether or not the head of household authorized release of his or her social security number on the CD-9600A, each signed CD-9600A shall be retained by the contractor in the family's Basic Data File.

I. Audits and Auditors

Contractors shall submit to the CDE's Audits and Investigations Division (A&I), an acceptable annual financial and compliance audit. All audits shall be performed by: (1) a Certified Public Accountant who possesses a valid license to practice within the State of California; (2) a Public Accountant licensed on or before December 31, 1970 and currently certified and licensed by the State of California; or (3) a member of the CDE's staff of auditors. Public agencies may have their audits prepared by in-house auditors if the public contractor has internal audit staff that performs auditing functions and meets the tests of independence found in Standards for Audits of Governmental Organization, Programs, Activities, and Functions issued by the Comptroller General of the United States.

Non-school district contractors shall submit the audit for the 2001-02 contract period by the 15th day of the fifth month following the end of the contractor's fiscal year, or earlier if specified by CDE (audits of community college districts shall be submitted by December 31, 2002). If a contractor receives less than twenty-five thousand dollars ($25,000) per year from any state agency, the audit shall be conducted and submitted biennially, unless there is evidence of fraud or other violation of state law in connection with the contract.

In addition to the audit required by the preceding paragraph, non school district contractors shall also submit an audit for the current year's contract period by the 15th day of the fifth month following the end of the contractor's fiscal year, or earlier if specified by the CDE, unless the contract is terminated during the contract period, in which case the audit required under this paragraph shall cover the period from the beginning of the contract through the date of termination.

The audits for school districts and county offices of education for 2001-02 shall be submitted to the State Controller and the A&I by December 15, 2002 in accordance with Education Code Section 41020 and extensions shall only be granted in accordance with Education Code Section 41020.2.

Private agencies (including proprietary entities) that expend $300,000 or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with OMB Circular A-133 and the "Audit Guide for Audits of Child Development and Nutrition Programs" prepared by CDE's A&I. Governmental and other public agencies (excluding school districts, county offices of education and community college districts) must comply with the requirements of OMB Circular A-128 and the CDE's "Audit Guide." All other agencies (excluding school districts, county offices of education and community colleges) must submit a contractor audit performed in accordance with the CDE's "Audit Guide."

Management subcontracts shall be audited in accordance with the requirements stated in Section IV.F above.

J. Review of Audit by the CDE's Audits and Investigations Division

The CDE's A&I shall conduct a review of the audit to determine whether the audit is acceptable and to determine the contractor's net reimbursable program costs. The A&I' determination of earnings shall be the final accounting of any amount payable to or receivable from the contractor pursuant to the contract.

The contractor may appeal the A&I' findings according to the procedures specified in Section VIII.A below if the amount of the demand for remittance meets or exceeds the threshold specified in Education Code Section 8402(c).

K. Delinquent Audits and One-Time-Only Extensions

If an audit is not received on or before the required due date and an extension has not been granted, the audit shall be considered delinquent and all apportionments shall be withheld as specified in Section V.M above.

Except for contractors on conditional status, the A&I may grant a contractor a one-time-only, thirty (30) calendar day extension of the audit due date provided the inability of the contractor to submit the audit by the due date was beyond the fault and control of the contractor.

Contractors shall be liable for all CDE costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

L. Bureau of State Audits Audit

Contractors shall be subject to the examination and audit of the Bureau of State Audits for a period of three (3) years after final payment under this contract.

M. Budget and Calendar

Contractors shall submit a revised calendar to the CDD and the CDFS whenever there are changes to the most recent version submitted to the CDE. Contractors shall submit revised budgets to the CDD as requested by the CDD.

N. Reserve Accounts

All contractors are encouraged to develop and maintain a reserve within the Child Development Fund. This reserve is derived from earned but unexpended funds calculated on current year service-based contracts. The following criteria must be followed when establishing and using a reserve account:

1. Each agency wishing to establish a reserve shall submit a letter of intent no later than July 20 following the close of the fiscal year for which the reserve will be established. The letter of intent must be on agency

letterhead and signed by the executive director (or authorized representative for public agencies).

2. Each reserve must be maintained in an interest-bearing account and the amount of interest earned will be included in the reserve balance.

3. Reserve monies can only be used for expenses that are reimbursable allowable expenses as defined in the FT&C. Transfers from one reserve to another are not allowable.. However, transfers to a current-year contract in the same reserve category are allowable and shall be reported as restricted program income on that contract's attendance and fiscal report.

4. Reserve monies are generated from current year contracts; therefore, the transferable amount generated during the contract period will not be available until July 1 of the subsequent fiscal year.

5. Transfers to the reserve will be authorized by CDFS only once a year. Upon receipt of the June final report, preliminary reserve amounts will be calculated by CDFS and reported to the contractor. If the contractor is an LEA, this may be the official notification provided there are no further amendments. For agencies that are required to submit an audit to the CDE, the amount will not be final until the audit is closed by the OEA and there are no outstanding billings.

6. Participating agencies must submit a Reserve Account Status Report for each reserve category type along with their June attendance and fiscal report due July 20.

7. Upon termination of all child development contracts, all monies in that reserve account shall be returned to the CDE.

VII. CONTRACT CLASSIFICATIONS

A. Clear Status

Contractors that are in full compliance with applicable laws, regulations and contract provisions are awarded clear contracts.

B. Provisional Status

New contractors shall be on "provisional" status (stamped on the facesheet of the contract) for a period of not less than twelve (12) months. Contractors on provisional status shall submit monthly fiscal and attendance reports to the CDFS.

C. Conditional Status

Contractors receiving "conditional" contracts (stamped on the facesheet of the contract) shall be on conditional status until the CDE issues a contract rider formally clearing the contract as specified in Section IX.D below. While on conditional status the contractor shall submit monthly fiscal and attendance reports to the CDFS. The first monthly report shall include a current inventory of equipment purchased in whole or in part with contract funds.

VIII.TERMINATION, SUSPENSION AND MAJOR REDUCTIONS IN CONTRACT PAYMENTS

A. Independent Appeal Procedures

Pursuant to the requirements of Education Code Sections 8400 through 8409, an independent appeal procedure shall be available to any contractor whose contract is terminated or suspended, or whose total reimbursable contract amount is reduced by four percent (4%) or $25,000, whichever is less. Such appeals shall be heard by independent hearing officers in accordance with procedures established by the Office of Administrative Hearings (OAH) as specified in Title 1 California Code of Regulations, Sections 201 through 207, described below in Section VIII.B.

Termination or suspension of a contract during the contract period may occur when: (1) a contractor fails to correct items of fiscal or programmatic noncompliance within six (6) months of receiving a conditional contract which includes an addendum stating the specific items of noncompliance and the corrective actions necessary to come into compliance or (2) a contractor engages in serious misconduct posing an immediate threat to health and safety or to State funds for any of the reasons listed in Education Code Section 8406.7.

Any action by the CDD to terminate or suspend a contract or to reduce the total reimbursable contract amount, as stated in Education Code Section 8402(a) through (c), shall be preceded by a notice stating the specific reasons for the action and describing the contractor's appeal rights. If the action is appealed, a copy of this information shall also be submitted to the OAH.

To assure that there is no interruption in services to children, the CDD will initiate a competitive application process for the appellant's contract during the appeal process. Unless the termination or suspension is for reason(s) specified in Education Code Section 8406.7 or imminent danger to the health and welfare of children, the contractor may continue to operate during the appeal process.

B. Formal Appeals Procedures

1. Appeal Petition

The contractor may contest the noticed action by filing an appeal petition by registered mail with the CDD requesting a hearing before the OAH, not later than fifteen (15) calendar days from the service of the notice of action. The petition shall include (a) a clear, concise statement of the action being appealed, (b) the reasons the action is unwarranted and (c) any written documentation in support of the appeal.

2. Hearing

If the contractor requests a hearing, it will be held within thirty (30) calendar days of receipt of the petition by the CDD, but at least ten (10) calendar days' written notice will be given of the time and place of the hearing. An OAH hearing officer will hear evidence submitted by the State and the contractor during the hearing. The hearing will be recorded. The hearing officer may continue hearings, if deemed necessary.

3. The Decision

The hearing officer shall issue a final decision, in writing, within thirty (30) calendar days after the submission of the case. The decision shall be sent by registered mail or personally served on the representatives of the parties by OAH. The decision shall the final administrative action afforded the contractor.

4. Request for Additional Written Materials on File at CDE

Contractors may request, in writing, any public documents on which the CDE intends to rely from the CDE files at a cost of six (6) cents per page, payable in advance. The CDE will mail the material requested not later than

ten (10) days from the receipt of the request.

C. Contractor's Responsibility After Notice of Termination

After receiving notice of the CDD's decision to terminate the contract, the contractor shall submit to the CDD all of the following: (1) a current inventory of equipment purchased in whole or in part with contract funds; (2) the names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and (3) monthly enrollment and attendance reports until the contract is actually terminated. Contractors providing services through family child care homes shall also submit the names, addresses and telephone numbers of al providers of subsidized services under the contract.

The State shall only be obligated to compensate the contractor for net reimbursable program costs in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The State shall offset any monies the contractor owes the State against any monies the State owes under this contract.

IX. CONTRACT STATUS CHANGE PROCEDURES

A. Administrative Review of Changes in Contract Status

Contract performance shall be reviewed at least annually by CDD staff who shall determine by April 1 of each year whether to offer continued funding on a clear contract, continued funding on a conditional basis or to make no offer of continued funding.

If the staff recommends conditional status or no offer of continued funding, the contractor shall be notified in writing of the reasons for the proposed change in contract status by April 7. The notice of proposed action shall be sufficiently specific to allow the contractor to respond to the factual basis for the proposed action.

If the contractor disagrees with the proposed action, the contractor's response shall be received by the CDD within ten (10) calendar days of receipt of the notice of proposed action. The contractor's response shall include any written materials in support of its position and, if the contractor intends to make an oral presentation, the response shall so specify.

If the action is being appealed, the staff recommendation and the contractor's response shall be reviewed by an administrative review panel convened by the Director of the CDD within seven (7) calendar days of receipt of the contractor's response. The review panel will consist of representatives of CDD management, the CDFS and CDE's Legal Office, A&I and Contracts Office and a representative of a child care and development service provider familiar with the type(s) of program(s) operated by the contractor.

Upon review of the written submissions, the panel will do one of the following: (1) issue a final decision upholding or modifying the proposed change in status if no oral presentation has been requested; (2) schedule a time and place for an oral presentation by the contractor or (3) issue a final decision to not change the contract status.

If an oral presentation has been requested, the contractor will be notified by telephone of the time and place of the presentation. The oral presentation will be scheduled no later than fourteen (14) calendar days from receipt of the contractor's response.

At the oral presentation, the contractor or the contractor's representative will have an opportunity to explain any material submitted in its response. While the contractor may present any information or arguments that are relevant to the proposed action, the review panel may set reasonable limits on the scope of the presentation.

Within seven (7) calendar days after the oral presentation, the review panel shall issue and mail to the contractor a decision upholding, reversing or modifying the proposed change in contract status. The decision of the review panel shall be the final action of the CDE with regard to that contract.

B. Conditional Status Imposed During the Contract Period

If the contractor demonstrates fiscal or programmatic noncompliance during the contract period, based on such information as an annual audit report, a contract compliance review, a program quality review, or a change in licensing status, the CDD may place the contract on conditional status for the remainder of the contract period.

The contractor shall receive notice and may request an administrative review of the proposed action as set forth in Section IX.A above, in the event such a change in contract status is recommended by staff of the CDD.

If the contract is placed on conditional status during the last ninety (90) days of the contract period and the contractor is offered continued funding, the contract for the subsequent contract period will also be on conditional status.

C. Conditional Status Addendum

A conditional status contract shall contain a bill of particulars as specified in Education Code Section 8406.6 called a Conditional Status Addendum explaining the contract conditions. The Addendum shall include the following: (1) the specific item(s) of noncompliance which the contractor must correct; (2) the specific corrective action(s) which must be taken; (3) the time period within which the contractor must complete the corrections; and (4) notice that failure to make required corrections will result in termination of the contract or no offer of continued funding.

If the contractor is placed on conditional status during the contract period a Conditional Status Addendum will be issued by the CDE and the Conditional Status Addendum shall be considered a part of the annual child development contract and binding on the contractor.

D. Duration of Conditional Contract Status

A contractor shall remain on conditional contract status until the contractor has corrected deficiencies and/or has met requirements identified in the Conditional Status Addendum. A contractor with a repayment plan shall remain on conditional contract status and not receive any apportionments until full repayment is made.

A contractor on conditional contract status that is not on a repayment plan shall remain in that status until: (1) the CDE issues written notice to the contractor that the conditional status has been cleared; (2) the contractor is issued a clear contract; or (3) the contract terminates according to its terms.

A contractor may request written verification from the CDD that some of the deficiencies have been corrected even if the contractor will not be removed from conditional contract status.

X. RESOLUTION OF CONTRACT ADMINISTRATION DISPUTES

The procedure specified in this Section shall be used to resolve disputes between contractors and the CDE that may arise regarding the interpretation and application of any term or condition of a contract, including, but not limited to, requests for waivers, approval of subcontracts or expenditures requiring approval, requests for reimbursement rate adjustments, or reductions in the total amount of contract reimbursement that are not appealable under Section VIII.A above.

The contractor shall attempt to resolve contract disputes at the lowest staff level within the CDE. If the dispute is not resolved at the lowest staff level, the contractor may appeal the decision by submitting a written description of the issues and the basis for the dispute to the Field Services Unit Administrator of the CDD having jurisdiction over the contractor's service delivery area. The Administrator shall make a determination and shall send a written notification of the decision to the contractor, together with the reasons for the decision, within thirty (30) calendar days of the receipt of the appeal by the Administrator.

The contractor may appeal the decision of the Administrator to the Director of the CDD by submitting a written description of the issues in dispute, and a copy of the Administrator's decision. The Director of the CDD shall send notification of the decision to the contractor and shall specify the reason(s) for the decision within thirty (30) calendar days of the receipt of the appeal by the Director. The decision of the Director of the CDD shall be the final administrative action afforded the contractor.

STATE BASED MIGRANT PROGRAM REQUIREMENTS

Fiscal Year 2002-03

I. DEFINITIONS

As used in the Program Requirements:

"Adjusted monthly income" means total countable income minus verified child support payments paid by the parent whose child is receiving child development services. Except for child support payments paid by the parent, monthly income shall not be adjusted because of voluntary or involuntary deductions. When income fluctuations occur, the adjusted monthly income shall be computed by averaging the total adjusted income received during the twelve (12) months immediately preceding the month in which the application for services is signed or updated.

"Certify eligibility" means the formal process the contractor goes through to collect information and documentation to determine that the family and/or child meets the criteria for receipt of subsidized child development services as specified in Sections II.A, II.B and II.C below. The signature of the contractor's authorized representative on an application for services attests that the criteria have been met.

"Child protective services" means children receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation (see section II.P Documentation of Child Protective Services, p. 33, for specific requirements).

"Children with exceptional needs" means children who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, of the Education Code and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children have an active individualized education program, and are receiving appropriate special education and services, unless they are under three years of age and permissive special education programs are available. These children may be developmentally disabled, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped or children with specific learning disabilities, who require the special attention of adults in a child care setting.

"Declaration" means a written statement signed by a parent under penalty of perjury attesting that the contents of the statement are true and correct to the best of his or her knowledge.

"Displace families" means to disenroll families in order to reduce service levels due to insufficient funding or inability of a contractor to operate one or more sites because of reasons beyond the control of the contractor, including earthquakes, floods or fire.

"Income eligible" means that a family's adjusted monthly income is at or below seventy-five percent (75%) of the state median income, adjusted for family size and adjusted annually. **Children** in subsidized child care programs with an exit criterion of one hundred percent (100%) of the state median income adjusted for family size is above seventy-five percent (75%) of the state median income shall not be displaced and shall continue to receive services as long as they continue to meet the criteria that apply to the program on December 31, 1997.

"Income fluctuation" means income which varies because of income such as bonuses, commissions, overtime, lottery winnings or migrant agricultural work or other seasonal employment.

"Legally qualified professional" means a person licensed under applicable laws and regulations of the State of California to perform legal, medical, health or social services for the general public.

"Notice of Action, Application for Services" means a written statement of specific information issued by the contractor that informs the applicant of the contractor's decision to approve or deny child care and development services. Section XV.A below describes the specific information that must be included to have the contractor's decision reviewed.

"Notice of Action, Recipient of Services" means a written statement of specific information issued by the contractor that informs the parent(s) receiving child care services that need and eligibility requirements are no longer being met, or fees have not been paid, or the fee or amount of services provided by the contractor will be modified. Section XV.B below describes the specific information that must be included. The Notice of Action, Recipient of Services must provide the parent(s) an opportunity to have the contractor's decision reviewed.

"Parent" means any person living with a child who has responsibility for the care and welfare of the child.

"Parental incapacity" means that the ability of the child's parent(s) to provide normal care for the child is significantly limited.

"Recipients of service" means families and/or children enrolled in a child care and development program subsidized by the CDE.

"Severely handicapped children" means children who require instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance or severe developmental disability. These children may be assessed by public school special education staff, regional center staff or another appropriately licensed clinical professional.

"Social service agency" is agency which, in the course of day to day business, provides personal counseling, personal or group therapy using personnel properly certified or licensed under California law. Examples of such agencies include county welfare departments, county mental health departments, Family Service Association of America and Children's Home Society.

"State median income" means the most recent median income for California families as determined by the State Department of Finance.

"Total countable income" means income that does not include the following: (1) earnings of a child under age eighteen (18) years; (2) loans, grants, and scholarships obtained under conditions that preclude their use for current living costs; (3) grants or loans to students for educational purposes made or insured by a state or federal agency; (4) allowances received for uniforms or other work required clothing, food and shelter; (5) business expenses for self-employed family members and (6) income of a recipient of federal supplemental security income benefits pursuant to Title XVI of the Federal Social Security Act (42 SC Sec. 1381 et seq.) And state supplemental program benefits pursuant to Title XVI of the Federal Social Security Act and Chapter 3 (commencing with Section 12000) of part 3 of Division 9 of the Welfare and Institutions Code. (This means all income of the family member receiving SSI/SSP is excluded.)

"Update the application" means the process of revising the application for services between recertifications. The application shall be revised by inserting the latest family information that documents continued need and eligibility.

II. ELIGIBILITY AND NEED CRITERIA AND DOCUMENTATION

A. General Requirements

To receive State Based Migrant program services, the family shall have earned at least fifty percent (50%) of its total gross income from employment in fishing, agriculture or agriculturally related work during the twelve (12) month period immediately preceding the date of application for child care and development services. Families shall also meet eligibility and need criteria as specified in Sections II.B and II.C below.

In addition to meeting eligibility and need requirements, to be eligible for services the child's parent(s) must live and/or work in the State of California. Evidence of a street address, post office address, income verification or declaration to live or work in California satisfies this requirement. The governing board of a school district, community college district, or a county superintendent of schools may accommodate children residing outside the district boundaries in accordance with Education Code Section 8322(a). The determination of eligibility shall be without regard to the immigration status of the child or the child's parent(s) unless the child or the child's parent(s) is under a final order of deportation from the United States Department of Justice.

Children who have reached their fourteenth (14th) birthday are ineligible for subsidized services except that children with exceptional needs and severely handicapped may be served to age twenty-one (21). Children with exceptional needs shall also meet the criteria for that age group specified in Education Code Section 56026 and Title 5 California Code of Regulations, Sections 3030 and 3031.

B. Eligibility Criteria

Eligibility shall be established by 1, 2, 3 or 4 below:

1. Family is a public assistance recipient

2. Family is income eligible. When the number of family members and the amount of family income have been determined, eligibility may be established by reference to the family fee schedule.

   Note that in cases where the child is living with a custodial adult or guardian, income is typically computed on the basis of "family of one" (see section II.G, Determination of Family Size) in determining income eligibility and fee assessment.

3. Homeless

4. Child protective services as defined in Section I above

C. Need Criteria

Need shall be established by 1, 2, 3 or 4 below:

1. Child protective services as defined in Section I above

2. The parent (including custodial adults and guardians) and any other adult counted in the family size are any of the following:

   a. Employed (including court ordered community service)

If the parent (or other adult counted in the family size) works in the home, the nature of the work must preclude the supervision of the family's children. Family child care providers are not eligible for subsidized services because their work does not preclude the supervision of their own children. However, the children of family child care providers may be served in the State Preschool program or if need as specified in this section is based on the child's need.

b. Seeking employment. The family's period of eligibility for this purpose is limited to sixty (60) working days during the fiscal year. Service is limited to an average not to exceed five (5) days per week for an average of less than six and one-half (6 1/2) hours per day. (Note that "working days" applies to days the family receives subsidized services.) The limitation for families participating in CalWORKs shall be in accordance with the approved welfare to work plan.

c. Participating in vocational training leading directly to a recognized trade, paraprofession or profession. The vocational training plan shall be reviewed by the contractor at the beginning of each semester or quarter to determine that progress is being made toward the vocational goal specified in the certification and eligibility documents. (See Section II.J below for additional documentation requirements.)

d. Homeless and seeking permanent housing for family stability.

3. Incapacity, including a medical or psychiatric special need, to the extent that the parent's ability to provide normal care for the child is significantly limited, verified by a legally qualified professional.

4. The child has a medical or psychiatric special need, including children with exceptional needs as defined in Section I above, which cannot be met without provision of services, verified by a legally qualified professional.

D. Certification of Eligibility

The contractor shall designate the staff person authorized to certify eligibility. Prior to initial enrollment and at the time of recertification, an authorized representative of the contractor shall certify each family's/child's eligibility for child care and development services after reviewing the completed application and documentation contained in the basic data file.

Prior to enrollment the contractor shall certify eligibility by completion of the following forms:

1. Application for child care and development services as described in Section II.F below.

2. Notice of Action, Application for Services as described in Section X.A below.

At the time of certification and recertification, families shall be informed of their responsibility to notify the contractor of any changes in family income, family size, or need for child care and development services.

When a child's residence alternates between the homes of separated or divorced parents, eligibility, need and fees should be determined separately for each household in which the child is residing during the time child development services are needed (i.e., separate certifications and service agreements). For example, a child may be subsidized during part of the week and full cost the rest of the week.

E. Contents of Basic Data File

Contractors shall establish and maintain a basic data file for each family receiving child care and development services. The basic data file shall contain an application for services, a signed Child Care Data Collection Privacy Notice and Consent Form (CD-9600A), items II.E.1 through II.E.8 as applicable to determine eligibility and need in accordance with Sections II.B and II.C above and items II.E.9 and II.E.10.

1. Documentation of total countable income
2. Documentation of employment
3. Documentation of training
4. Documentation of parental incapacity
5. Documentation of child's special needs
6. Documentation of homelessness
7. Documentation of seeking permanent housing for family stability
8. Written referral from a legal, medical or social services agency or emergency shelter for child protective services
9. Notice of Action, Application for Services and/or Recipient of Services
10. All child health and emergency information required by Title 22 California Code of Regulations, Community Care Licensing Standards.

F. Application for Services

The application for services shall contain the following information:

1. The parent's(s') full name(s), address(es) and telephone number(s)
2. The names and birth dates of all children under the age of eighteen (18) in the family, whether or not they are served by the program
3. The number of hours of care needed each day for each child;
4. The names of other family members in the household related by blood, marriage or adoption
5. The reason for needing child care and development services as specified in Section II.C above
6. Employment or training information for parent(s) including name and address of employer(s) or training institution(s) and days and hours of employment or training, if applicable
7. Eligibility status as specified in Section II.B above
8. Family size and income, if applicable
9. The parent's signature and date of the signature
10. The signature of the contractor's authorized representative certifying the eligibility.

G. Determination of Family Size

Family size shall be determined by the number of adults and children related by blood, marriage, or adoption who comprise the household in which the child is living. When an adult living in the household is neither the parent of the child nor the spouse of the parent, the adult and the adult's children if any, shall be excluded from the calculation of family size when such exclusion is to the advantage of the family. When a child is living with adult(s) other than a natural or adoptive parent, the child shall be considered a family of one. In these cases, a need criterion as specified in Section II.C above must be met by the guardian or caretaker of the child.

H. Documentation of Total Countable Income

Unless that basis of need and eligibility as specified in Sections II.B and II.C above is child protective services, the parent(s) shall provide copies of his or her most recent check stub(s) or the contractor shall record the following information on the application for services when viewing the most recent check stub(s): (1) date of the check(s); (2)

amount(s) of the gross pay specified on the check stub and (3) the period(s) covered by the check. Documentation shall be maintained for all income included in total countable income.

If the parent is self-employed, he/she may provide other documentation of income such as a letter from the source of the income or copies of tax returns or statements of estimated income for tax purposes. If the parent does not have documentation of his/her income, he/she may make a declaration of the amount of income.

I. Documentation of Public Assistance

If the basis of eligibility as specified in Section II.B above is public assistance, the contractor shall document that a family is receiving public assistance by recording the family's Medi-Cal number on the application.

J. Documentation of Employment

If the basis of need as specified in Section II.C above is employment of the parent(s), the basic data file shall contain documentation of the parent(s) employment. The documentation of employment shall consist of one of the following:

1. Statement of Wages which is attached to the check
2. A written statement from the employer
3. Documented telephone verification between the contractor's staff and the employer.

K. Documentation of Training

If the basis of need as specified in Section II.C above is training, the documentation in the basic data file shall include:

1. Name of the school or organization where training is received
2. Dates that current training activities will begin and end
3. A statement of the parent's(s') vocational goal(s)
4. The anticipated completion date(s) of all required training activities to meet the vocational goal
5. Class schedule which includes:
   a. The courses that the parent is currently enrolled in;
   b. Day(s) of the week and time(s) of day of the courses;
   c. Signature of parent along with the date the application was signed;
   d. Signature or stamp of the training institution's registrar and
6. Report cards, transcripts or other records to document that the parent is making progress toward the attainment of the vocational goal in accordance with item II.K.3.

L. Documentation of Parental Incapacity

If the basis of need as specified in Section II.C above is parental incapacity, the basic data file shall contain documentation of the parent's(s') incapacitation provided by a legally qualified professional. The documentation of incapacitation shall include:

1. A description of the nature of the incapacitation
2. The probable duration of the incapacitation
3. A statement that the parent's(s') incapacitation prevents the parent(s) from caring for the child for some part of the day
4. The number of hours that child care is needed each day because of the incapacitation and

5. The name, address, telephone number and signature of the legally qualified professional who is rendering the opinion of incapacitation.

M. Documentation of the Child's Special Needs

If the basis of need as specified in Section II.C above is the child's special need, the basic data file shall contain documentation of that special need from a legally qualified professional. The documentation of special need shall include:

1. A description of the nature of the child's special need and the special services required to meet the child's special need
2. The probable duration of the child's special need
3. A statement that the child's special need cannot be met without the provision of child care and development services
4. The number of hours that the child care is needed each day
5. The name, address, telephone number and signature of the legally qualified professional who is rendering the opinion of the special need and
6. For exceptional needs children, the basic data file shall also include information as specified in Education Code Section 56026 and Title 5 California Code of Regulations, Sections 3030 and 3031.

N. Documentation of Homelessness

If the basis of eligibility as specified in Section II.B above is homelessness, the basic data file shall include a written referral from an emergency shelter or other legal, medical or social service agency; or a written parental declaration that the family is homeless.

O. Documentation of Seeking Permanent Housing

If the basis of need as specified in Section II.C above is seeking permanent housing for family stability, the basic data file shall include documentation of homelessness as specified in Section II.N and a written parental declaration that the family is seeking permanent housing and needs child care and development services while seeking permanent housing.

P. Documentation of Child Protective Services

If eligibility and need as specified in Section II.B and II.C above are based on child protective services, the basic data file shall contain a written referral, dated within the six (6) months immediately preceding the date of application for services, from a legal, medical, social service agency or emergency shelter. The written referral shall include either:

1. A statement from the local county welfare department, child protective services unit certifying that the child is receiving child protective services and that child care and development services are a necessary component of the child protective services plan or

2. A statement by a legally qualified professional that the child is at risk of abuse or neglect and the child care and development services are needed to reduce or eliminate that risk and

3. The probable duration of the child protective service plan or the at-risk situation and

4. The name, address, telephone number and signature of the legally qualified professional who is making the referral.

Q. Updating the Application

Contractors shall update the family's application to document continued need and determine any change to fee assessment, if applicable, within thirty (30) days whenever there is a change in family size or need if need is based on training or incapacity of the parent.

The requirement for updating the files does not apply to families receiving services because the child is abused, neglected or exploited or at risk of abuse, neglect or exploitation except in cases of out-of-home custodial placements when need is based on the need of the custodial parent.

R. Recertification

After initial certification and enrollment, the contractor shall verify need and eligibility and recertify each family/child as follows:

1. Families receiving services because the child is at risk of abuse, neglect or exploitation shall be recertified at least once every six (6) months;
2. Families receiving services because of actual abuse, neglect or exploitation shall be recertified at least every six (6) months and, at the time of recertification, the contractor shall document that the family is participating in a protective services plan in accordance with the requirements of their local county welfare department, child protective services unit to alleviate the circumstances causing the abuse, neglect or exploitation;
3. All other families shall be recertified at least once each contract period and at intervals not to exceed twelve (12) months.

III. LIMITED TERM SERVICE LEAVE REQUIREMENTS

If the family will temporarily not have a need for subsidized child care and development services as specified in Section II.C above, the contractor may grant the family a limited term service leave. If the contractor grants a limited term service leave: (1) the family shall not be disenrolled from the program; (2) the service agreement with the parent shall indicate that no services will be provided during the limited term service leave; and (3) the contractor shall not report the child as enrolled nor claim reimbursement from the CDE while the child is on a limited term service leave.

A limited term service leave shall not exceed twelve (12) consecutive weeks in duration except when the parent is on a maternity or a medically related leave absence from their employment or training. Maternity or medical limited term service leaves shall not exceed sixteen (16) consecutive weeks in duration.

If the contractor grants limited term service leaves, the contractor shall establish and implement a policy regarding the criteria for approval of requests for limited term service leaves.

IV. ADMISSION POLICIES AND PROCEDURES

A. General Admission Procedures

Contractors shall develop written admission policies and procedures which shall be made available to the public. The admission procedures established shall conform to requirements in Title 22 California Code of Regulations, Section 101218.

B. Admission Priorities, Waiting List and Displacement

First priority: The family moves from place to place.

Second priority: The family has migrated within the past five (5) years, is currently dependent upon seasonal agricultural work and is currently settled near agricultural areas.

Third priority: The family resides in a rural agricultural area and is dependent upon seasonal agricultural work.

Contractors operating in federally funded public migrant housing centers shall reserve the first fourteen (14) days of their enrollment period for residents of the public migrant housing center.

The contractor shall maintain a waiting list in accordance with the priorities above. As vacancies occur, applicants shall be contacted in order of priority from the waiting list. If it is necessary to displace families, families shall be displaced in reverse order of these priorities.

V. FEE SCHEDULE

A. Fee Assessment

Contractors shall use a fee schedule prepared and issued by the CDD. The contractor shall utilize the following factors in determining the fee to be assessed for each family: (1) the adjusted monthly family income and (2) family size. The fee shall be assessed and collected based on the family's child who is enrolled for the longest period. The fee assessed and collected shall be either the fee indicated on the fee schedule, the actual costs of services or the contract maximum daily rate, whichever is least. No adjustment shall be made for excused or unexcused absences. The fee shall be the full portion of the family's cost for services. If the parent(s) works on a fluctuating schedule, the fee may be estimated and adjusted the following month. If the family's children are served in both federal and state programs, the fee must be pro-rated to each program based on the amount of care each child receives.

The contractor shall maintain a record of each family's fee assessment, the effective date(s) of each fee increase or decrease, the dates and amounts of fees collected and any amounts which are delinquent. The contractor shall explain to the parent(s) the contractor's policies regarding fee assessment and collection and the possible consequences for delinquent payment of fees.

B. Exclusions from Fee Assessment

No fees shall be collected from families whose children are enrolled because of a need for child protective services or with an income level that, in relation to family size, is less than the first entry in the fee schedule.

C. No Additional Payments or Costs/Exceptions

Except as provided in below, neither a contractor nor a provider of services shall require or solicit, in cash or in kind, additional payments from the recipients of service. The prohibition includes activities or services that would increase the family's cost of participation including meals, recreation and field trips. If additional payments are made or additional costs are incurred by the family, the contractor shall refund to the parent(s) the amount of payments made or costs incurred.

The contractor may require parents to provide diapers. The contractor providing field trips may charge parents a fee. No federal or state money shall be used to reimburse parents for the costs of field trips if those costs are charged as an additional fee. A contractor that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor may charge parents for field trips or require parents to provide diapers only under the following circumstances:

1. The contractor has a written policy adopted by the governing board that includes parents in the decision making process regarding:

   a. whether or not, and how much, to charge for field trip expenses
   b. whether or not to require parents to provide diapers

2. The maximum total of charges per child in a contract year does not exceed twenty-five dollars ($25)

3. No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. No adverse action shall be taken against any parent for that inability or refusal.

The contractor shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips shall be reported to the CDE and income received shall be reported as restricted income.

D. Credit for Fees Paid to Other Service Providers

This section shall apply to child care and development services provided by someone other than the contractor. When a contractor cannot meet all of a family's needs for child care for which eligibility and need as specified in Sections II.B and II.C above have been established, the contractor shall grant a fee credit equal to the amount paid to the other provider(s) of these child care and development services. The contractor shall apply the fee credit to the family's subsequent fee billing period. The family shall not be allowed to carry over the fee credit beyond the family's subsequent fee billing period.

The contractor shall obtain copies of receipts or cancelled checks for the other child care and development services from the parent. The copies of the receipts or cancelled checks shall be maintained in the contractor's fee assessment records.

E. Receipt for Payment of Fee

The contractor or service provider shall provide an original copy of a pre-numbered receipt to each person who pays a fee. The receipt shall show the amount paid, the date of payment, the rate of payment and the period of service purchased. The contractor shall retain a copy of the receipt in its fee assessment records.

F. Advance Payment of Fees

Contractors shall adopt a policy for the collection of fees in advance of providing services. The written policy shall be provided to families at the time of initial enrollment into the program.

Fees shall be considered delinquent after seven (7) calendar days from the date the fees were due.

A Notice of Action, Recipient of Services shall be used to inform the family of the following: (1) the total amount of unpaid fees; (2) the fee rate; (3) the period of delinquency; and (4) that services shall be terminated two (2) weeks from the date of the Notice unless all delinquent fees are paid before the end of the two-week period.

The contractor shall accept a reasonable plan from the parent(s) for payment of delinquent fees. The contractor shall continue to provide services to the child, provided the parent(s) pays current fees when due and complies with the provisions of the repayment plan.

Upon termination of services for nonpayment of delinquent fees, the family shall be ineligible for child care and development services until all delinquent fees are paid.

VI. SERVICES TO BE INCLUDED

In addition to the quality indicators contained in the Program Quality Requirements, the contractor shall services as required by Education Code Section 8232. Funding for these services is included in a separate local agreement (GMSS) and is not earned through provision of service but must be spent on reimbursable costs for the activities listed below:

A. Social Services

1. Bilingual liaison between migrant parents and the center or family child care home, or both
2. Liaison with the relevant community agencies and organizations, including health and social services
3. Identification and documentation of family needs and follow-up referrals as appropriate

B. Staffing

1. Bilingual health personnel shall be available to each program site
2. Professional and nonprofessional staff shall reflect the linguistic and cultural background of the children being served
3. Whenever possible, migrants will be recruited, trained and hired in the program. Documentation of training and career ladder opportunities and of recruitment and hiring efforts shall be provided to the CDD. Staff training shall include principles and practices of child care and development for the age groups of children being served.

C. Health Services

Health services shall include health and dental screening and follow-up treatment. Health records for all migrant children shall follow the child.

VII. CONFIDENTIALITY OF RECORDS

The use or disclosure of all information pertaining to the child and his/her family shall be restricted to purposes directly connected with the administration of the program. The contractor shall permit the review of the basic data file by the child's parent(s) or parent's authorized representative, upon request and at reasonable times and places.

The contractor shall share information necessary for the administration of the child care and CalWORKs programs for the time period for which the person receives child care.

VIII. STAFFING QUALIFICATIONS

A. Program Director

If the contractor operates at two (2) or more sites, the contractor shall employ a program director who has administrative and programmatic responsibility for the program. The program director shall meet the requirements specified in Attachment A.

The CDD may waive the qualifications for program director upon a finding of one of the following: (1) the applicant is making satisfactory progress toward securing a permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in two (2) or more sites or fulfilling the qualifications for program directors in severely handicapped programs, (2) the place or employment is so remote from institutions offering the necessary coursework as to make continuing education impracticable and the contractor has made a diligent search but has been unable to hire a more qualified applicant or (3) any other reason established by the rule by the Superintendent of Public Instruction.

B. Site Supervisor

At each site there shall be a person designated as the site supervisor who has operational program responsibility for the program. A site supervisor shall meet the requirements specified in Attachment A.

The CDD shall grant a waiver of this requirement upon a contractor's demonstration of the existence of compelling need. Factors the CDD shall consider in determining compelling need are as follows: (1) evidence that the contractor's recruitment efforts have not been successful in obtaining qualified applicants; (2) evidence of the contractor's inability to offer competitive salaries and/or (3) evidence of potential or current staff's lack of reasonable access to training resources which offer required course work.

C. Teacher

Teachers shall meet the requirements specified in Attachment A.

D. Applicability of Staffing Requirements

Contractors are not subject to regulations under CCR, Title 5, and the laws upon which those regulations are promulgated if subsidized children comprise less than a majority of the enrollment at a given center. If there are no facilities in the area able to meet the special needs of particular children, then the CDD may, upon request, waive its regulations for staffing and ratios for programs in which subsidized children comprise a majority of the enrollment.

IX. STAFFING RATIOS

Contractors shall maintain at least the following minimum ratios in all centers:

Infants (birth to 18 months old) - 1:3 adult-child ratio, 1:18 teacher-child ratio.
Toddlers (18 months to 36 months old) - 1:4 adult-child ratio, 1:16 teacher-child ratio.
Preschool (36 months to enrollment in kindergarten) - 1:8 adult-child ratio, 1:24 teacher-child ratio.
Children enrolled in kindergarten through 14 years old - 1:14 adult-child ratio, 1:28 teacher-child ratio.

Compliance with these ratios shall be determined based on actual attendance. Whenever groups of children of two (2) age categories are commingled and the younger age group exceeds fifty percent (50%) of the total number of children present, the ratios for the entire group must meet the ratios required for the younger age group. If the younger age group does not exceed fifty percent (50%) of the total number of the children present, the teacher-child and adult-child ratios shall be computed separately for each group.

Except as otherwise provided in Title 22 California Code of Regulations, Community Care Licensing Standards the program may exceed teacher-child and adult-child ratios by fifteen percent (15%) for a period of time not to exceed one hundred twenty (120) minutes in any one day.

X. DUE PROCESS REQUIREMENTS

A. Notice of Action, Application for Services

The contractor's decision to approve or deny services shall be communicated to the applicant through a written statement referred to as a Notice of Action, Application for Services, in accordance with Section X.C below. The contractor shall maintain copies of the Notice of Action, Application for Services in the basic data file. The Notice of Action, Application for Services shall include: (1) the applicant's name and address; (2) the contractor's name and address; (3) the name and telephone number of the contractor's authorized representative who made the decision; (4) the date of the notice; (5) the method of distribution of the notice.

If services are approved, the notice shall also contain: (1) basis of eligibility; (2) daily fee, if applicable; (3) duration of the eligibility; (4) names of children approved to receive services; and (5) hours of service approved for each day.

If the services are denied, the notice shall contain: (1) the basis of denial and (2) instructions for the parent(s) on how to request a hearing if they do not agree with the contractor's decision in accordance with procedures specified below.

B. Notice of Action, Recipient of Services

If upon recertification or update of the application, the contractor determines that the need or eligibility requirements are no longer being met, or the fee or amount of service needs to be modified, the contractor shall notify the family through a written Notice of Action, Recipient of Services in accordance with Section X.D below. The contractor shall maintain copies of all Notices of Action, Recipient of Services in the family's basic data file. The Notice of Action, Recipient of Services shall include: (1) the type of action being taken; (2) the effective date of the action; (3) the name and address of the recipient; (4) the name and address of the contractor; (5) the name and telephone number of the contractor's authorized representative who is taking the action; (6) the date the notice is mailed or given to the recipient; (7) the method of distribution to the recipient; (8) a description of the action; (9) a statement of the reason(s) for the changes; (10) a statement of the reason(s) for termination, if applicable; and (11) instructions for the parent(s) on how to request a hearing if they do not agree with the contractor's decisions in accordance with procedures specified in Section X.E below.

C. Approval or Denial of Child Care and Development Services

The contractor shall mail or deliver a completed Notice of Action, Application for Services to the parents within thirty (30) calendar days from the date the application is signed by the parent(s).

D. Changes Affecting Service

The contractor shall complete a Notice of Action, Recipient of Services when changes are made to the service agreement. Such changes may include, but are not limited to, an increase or decrease in parent fees, an increase or decrease in the amount of services, or termination of service. The contractor shall mail or deliver the notice of action to the parents at least fourteen (14) calendar days before the effective date of the intended action. (If the Notice of Action is mailed, the 14-calendar day period is extended by five calendar days, which establishes a presumption that the parent received the Notice of Action.)

To promote the continuity of child care and development services, a family that no longer meets a particular program's income, eligibility or need criteria may have their services continued if the contractor is able to transfer that family's enrollment to another program for which the family continues to be eligible prior to the date of termination of services. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

E. Clients Request for a Hearing and Procedures

If the parent disagrees with an action, the parent(s) may file a request for a hearing with the contractor within fourteen (14) calendar days of the date the Notice of Action was received. Upon the filing of a request for hearing, the intended action shall be suspended until the review process has been completed. The review process is complete when the appeal process has been exhausted or when the parent(s) abandons the appeal process.

Within ten (10) calendar days following the receipt of the request for a hearing, the contractor shall notify the parent(s) of the time and place of the hearing. The time and place of the hearing shall, to the extent possible, be convenient for the parent(s).

The hearing shall be conducted by an administrative staff person who shall be referred to as "the hearing officer." The hearing officer shall be at a staff level higher in authority than the staff person who made the contested decision.

The parent(s) or parent's authorized representative is required to attend the hearing. If the parent or the parent's authorized representative fails to appear at the hearing, the parent will be deemed to have abandoned his or her appeal. Only persons directly affected by the hearing shall be allowed to attend.

The contractor shall arrange for the presence of an interpreter at the hearing, if one is requested by the parent(s).

The hearing officer shall explain to the parent(s) the legal, regulatory, or policy basis for the intended action.

During the hearing, the parent(s) shall have an opportunity to explain the reason(s) they believe the contractor's decision was incorrect. The contractor's staff shall present any material facts omitted by the parent(s).

The hearing officer shall mail or deliver to the parent(s) a written decision within ten (10) calendar days after the hearing.

F. Appeal Procedure for CDD Review

If the parent disagrees with the written decision from the contractor, the parent has fourteen (14) calendar days in which to appeal to the CDD. If the parent(s) do(es) not submit an appeal request to the CDD within fourteen (14) calendar days, the parents' appeal process shall be deemed abandoned and the contractor may implement the intended action.

The parent(s) shall specify in the appeal request the reason(s) why he/she believes the contractor's decision was incorrect. A copy of the contractor's notice of intended action and written decision shall be submitted by the parent(s) with the appeal request.

Upon receipt of an appeal request, the CDD may request copies of the basic data file and other relevant materials from the contractor. The CDD may also conduct any investigations, interviews or mediation necessary to resolve the appeal.

The decision of the CDD shall be mailed or delivered to the parent(s) and to the contractor within thirty (30) calendar days after receipt of the appeal request.

G. Contractor Compliance with CDD Decision

The contractor shall comply with the decision of the CDD immediately upon receipt thereof. The contractor shall be reimbursed for child care and development services delivered to the family which is appealing during the appeal process. If a contractor's determination that a family is ineligible is upheld by the CDD, services to the family shall cease upon receipt of the CDD's decision by the contractor.

GENERAL PROGRAM QUALITY REQUIREMENTS

Fiscal Year 2002-03

I. PROGRAM PHILOSOPHY, GOALS AND OBJECTIVES

Each contractor shall have a written philosophical statement and goals and objectives which support that philosophy. The governing body of each contractor shall approve the program philosophy, goals and objectives. The goals and objectives shall address the requirements contained in Sections II through IX below and shall reflect the cultural and linguistic characteristics of the families served by the contractor.

II. DEVELOPMENTAL PROFILE

A "developmental profile" is a record of a child's physical, cognitive, social and emotional development. Teacher and parent observations shall be included as part of the child's developmental profile. The contractor shall complete a developmental profile of each child upon enrollment and at least at the following intervals:

A. Infants once every three (3) months
B. Toddlers once every six (6) months
C. Preschoolers every twelve (12) months

Contractors serving school-age children need not conduct a developmental profile but shall identify each child's needs, skills and interests upon enrollment and annually thereafter.

The contractor shall use the developmental profiles to plan and conduct age and developmentally appropriate activities.

III. EDUCATION PROGRAM

Each contractor shall include in its program an educational program component that is developmentally, culturally and linguistically appropriate for the children served. The educational program component shall provide activities which will facilitate a child's physical, cognitive, social and emotional development.

IV. STAFF DEVELOPMENT PROGRAM

Each contractor shall develop and implement a staff development program which includes the following:

A. Identification of training needs of staff or service providers
B. Written job descriptions
C. An orientation plan for new employees
D. An annual written performance evaluation procedure unless a different frequency of performance evaluations is specified in a contractor's collective bargaining agreement with their employees
E. Staff development opportunities which include topics related to the functions specified in each employee's job descriptions and those training needs identified in Section IV.A above
F. An internal communication system that provides each staff member with the information necessary to carry out his or her assigned duties

V. PARENT INVOLVEMENT AND EDUCATION

Each contractor shall include in its program a parent involvement and education component which shall include the following:

A. An orientation for parents that includes topics such as program philosophy, program goals and objectives, eligibility criteria and priorities for enrollment, fee requirements, due process procedures and program activities
B. At least two (2) individual parent/teacher conferences per year
C. Parent meetings with program staff
D. An open door policy which encourages parents to participate in the daily activities whenever possible
E. A parent Advisory Committee which advises the contractor on issues related to services to families and children

VI. HEALTH AND SOCIAL SERVICES

Each contractor shall include in its program a health and social service component that:

A. Identifies the needs of the child and the family for health or social services
B. Refers a child and/or family to appropriate agencies in the community based on the health or social service needs
C. Conducts follow-up procedures with the parent to ensure that the needs have been met

VII. COMMUNITY INVOLVEMENT

Each contractor shall solicit support from the community including the solicitation for donated goods and services. Each contractor shall provide information to the community regarding the services available. Contractors may utilize media or other forms of communication in the community.

VIII. NUTRITION

Each contractor shall include in its program a nutrition component that ensures that the children have nutritious meals and snacks during the time in which they are in the program. The meals and snacks shall be culturally and developmentally appropriate for the children being served and shall meet the nutritional requirements specified by the federal Child Care Food or the National School Lunch program.

IX. ANNUAL SELF-STUDY PROCESS

Each contractor shall develop and implement an annual self-study plan that determines if the program goals and objectives are being met. The self-study shall include a self-assessment by the contractor using the coordinated Compliance/Contract Monitoring review instrument in accordance with instructions specified by the CDD. The self-study plan shall include assessment of the program by parents. The contractor shall submit a summary of the findings of the self-study to the CDD by March 1 of each year. The contractor shall modify its goals and objectives to address any areas identified during the self-study as needing improvement.

STAFFING QUALIFICATIONS

Program Director Qualifications	Site Supervisor Qualifications	Teacher Qualifications
Education/Experience/Permit Requirements • A permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in multiple sites. This can be either of the following permits: A. Child Development Program Director Permit B. Children's Center Supervision Permit **OR** • A CURRENT CREDENTIAL ISSUED BY THE Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics, and six units in administration/supervision of ECE/CD (not required to any person who was employed as a program director prior to 1/1/93 in a child care and development program receiving funding by the CDD) and 12 units of ECE/CD or at least two years' experience in an ECE./CD program. **OR** • An Administrative Services Credential authorizing administration or supervision in public school in California that includes a preschool authorization. For Severely Handicapped Programs only: Education Code Section 8360.3 For School-Age Community Child Care Programs only: CCR, Title 5, Section 18203 For Severely Handicapped and School-Age Community Child Care Programs, the requirements have not changed.)	Education/Experience/Permit Requirements • A permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. This can be either of the following permits: A. Child Development Site Supervisor Permit B. Children's Center Supervision Permit **OR** • A current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics, and six units in administration/supervision of ECE/CD (Not required to any person who was employed as a program director prior to 1/1/93 in a child care and development program receiving funding by the CDD) and 12 units of ECE/CD or at least two years' experience in an ECE/CD program. **OR** • An Administrative Services Credential authorizing administration or supervision in public schools in California that includes a preschool authorization. • For School-Age Community Child Care Programs only: Title5, California Code of Regulations, Section 18205 (For School-Age Community Child Care Programs, the requirements have not changed)	Education/Experience/Permit Requirements • A permit issued by the Commission on Teacher Credentialing authorizing service in the care, development, and Instruction of children in a child care and development program. This can be either of the following permits: A. Regular Children's Center Instructional Permit B Limited Children's Center Instructional Permit C Emergency Children's Center Instructional Permit D. Child Development Master Teacher Permit E. Child Development Teacher Permit F. Child Development Associate Teacher Permit (Note: This permit authorizes the holder to supervise Assistant Permit holders only, not aides). **OR** • A Current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics, and 12 units in ECE and/or CD or two years' experience in early childhood education or a child care and development program. For Severely Handicapped Programs only: Education Code Section 8360.3 For School-Age Community Child Care Programs only: CCF, Title 5, Section 18206 (For Severely Handicapped and School-Age community Child Care Programs, the requirements have not changed.)