

EXHIBIT D
(Standard Agreement)

SPECIAL TERMS AND CONDITIONS

1. **TRAVEL/PER DIEM**

- A. Subcontractor's total travel and per diem costs for in-state and/or out-of-state shall be included in the Agreement Budget(s). Out-of-state travel costs that exceed the budgeted amount shall not be reimbursed without prior written authorization from NCIDC.
- B. Subcontractor's employee travel costs and per diem reimbursement rates shall be reimbursed in accordance with Subcontractor's written policies and procedures not to exceed federal per diem requirements, and subject to the requirements of OMB Circular A-87 Attachment B, Paragraph 43 (2 CFR, Part 225) or OMB Circular A-122 Attachment B, Paragraph 51 (2CFR, Part 230), as applicable.
- C. In the absence of a written travel reimbursement policy, Subcontractor shall be subject to the provisions of California Code of Regulations §§599.615 through 599.638 and shall be reimbursed in accordance with the terms contained therein.

2. **CERTIFICATIONS**

- A. Subcontractor's signature affixed hereon shall constitute a certification that to the best of its ability and knowledge it will comply with the provisions set forth in the following:
 - 1) Drug-Free Workplace Requirements Contract Certification Clause (CCC-307)
 - 2) National Labor Relations Board Certification (CCC-307)
 - 3) Expatriate Corporations (CCC-307)
 - 4) Domestic Partners (CCC-307)
 - 5) Amendment for Change of Agency Name (CCC-307)
 - 6) Resolution (CCC-307)
 - 7) Air and Water Pollution Violation (CCC-307)
 - 8) Information Integrity and Security (Department of Finance, Budget Letter 04-35)

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- 9) Safeguarding Against and Responding to a Breach of Security Involving Personal Information (Department of General Services, Management Memo 08-11)
- B. The above documents are hereby incorporated by reference into this Agreement. To access these documents, please visit <http://ncidc.org/statewide-operations/csbg-info>

3. INTERNAL CONTROL CERTIFICATION

Subcontractor shall ensure the establishment and maintenance of a system of internal accounting and administrative control. This responsibility includes documenting the system, communicating system requirements to employees, and assuring that the system is functioning as prescribed and is modified, as appropriate, for changes in conditions. The system of internal accounting and administrative control shall be attested to within the Subcontractor's independent audit conducted pursuant to this Agreement, and include:

- A. Segregation of duties appropriate to safeguard State assets.
- B. Access to agency assets is limited to authorized personnel who require these assets in the performance of their assigned duties.
- C. Authorization and recordkeeping procedures adequate to provide effective accounting controls over assets, liabilities, revenues, and expenditures.
- D. Practices to be followed in performance of duties and functions.
- E. Personnel of a quality commensurate with their responsibilities.
- F. Effective internal review.

4. CONFLICT OF INTEREST

- A. Subcontractor certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest and that no officer or employee who performs any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit that either directly or indirectly arises from this Agreement.
- B. Subcontractor shall establish written safeguards to prohibit its employees or its officers from using their positions for a purpose that could result in private gain or that gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

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5. CODES OF CONDUCT

- A. Subcontractor shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts or subcontracts. No employee, officer, or agent of the Subcontractor shall participate in the selection, award, or administration of a subcontract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Subcontractor shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors or parties to sub agreements. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipients.
- B. Subcontractor shall not pay federal funds received from NCIDC to any entity in which it (or one of its employees, officers, agents, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein) has an interest. As ownership constitutes a financial interest, Subcontractor shall not subcontract with a subsidiary. Similarly, Subcontractor shall not subcontract with an entity that employs or is about to employ any person described in 45 CFR Part 92 (for states and local governments) and 45 CFR Part 74 (for nonprofit organizations), and/or OMB Circular A-110, Section 42.

6. COMPLIANCE MONITORING

- A. As the recipient of federal CSBG funds under this Agreement, Subcontractor is responsible for substantiating that all costs claimed under this Agreement are allowable and allocable under all applicable federal and State laws, and for tracing all costs to the level of expenditure.
- B. As the American Indian administrator for the CSBG Network, NCIDC is required to ensure that funds allocated to Subcontractor are expended for the purposes identified in federal and State CSBG law, and for allowable and allocable costs under the applicable rules of the OMB.
- C. NCIDC is required to conduct onsite and follow-up monitoring of Subcontractor to ensure that Subcontractor meets the performance goals, administrative standards, financial management requirements, and other requirements of the federal and State CSBG program.

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- D. NCIDC shall provide Subcontractor reasonable advance written notice of on-site monitoring reviews of Subcontractor's program or fiscal performance.

Subcontractor shall cooperate with NCIDC program and audit staff and other representatives, and provide access to all programs, records, documents, resources, personnel, inventory, and other things reasonably related to the administration and implementation of the services and activities funded directly or indirectly by this Agreement.

- E. In the event NCIDC determines that Subcontractor is not in compliance with material or other legal requirements of this Agreement, NCIDC shall provide Subcontractor with the observations, recommendations, and/or findings in writing, along with a specific action plan for correcting the noncompliance.
- F. The NCIDC reserves the right to not re-contract with any Subcontractor who is not in compliance with the material and other legal requirements of this or any prior agreements.

7. SPECIAL CONDITIONS FOR ENTITIES NOT MEETING TERMS OF THE AGREEMENT

- A. In addition to NCIDC's authority to terminate, suspend, or deny funding or refunding under federal and State laws and regulations, NCIDC has authority to establish fiscal control and accounting procedures to fulfill its oversight responsibilities and ensure that CSBG funds are appropriately expended. Thus, notwithstanding the express exception in 45 CFR Part 92 as applied to the CSBG Program, NCIDC hereby incorporates by reference 45 CFR Part 92.12 and may impose special conditions on Subcontractor, according to that Section, as a result of unsatisfactory performance of and/or noncompliance with the requirements, standards, and guidelines of this Agreement.
- B. Subcontractor shall ensure that requirements set forth in this Agreement are met, that all required documentation is submitted in a timely manner, and that any corrective action plans are fulfilled. Failure by Subcontractor to meet prescribed timelines or take corrective action shall be deemed a material breach of this Agreement, and NCIDC shall take appropriate action, including, but not limited to, withholding advance payments and initiation of the suspension and termination procedures prescribed by State and federal CSBG laws and/or regulations.

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8. BOARD ROSTER, BYLAWS, RESOLUTION AND MINUTES

- A. Upon Execution of the Agreement, Subcontractor shall submit to NCIDC a current roster of the Governing Board and the most recent version of the organizational bylaws. Subcontractor is responsible to notify NCIDC of any changes to the Board Roster or Bylaws within thirty (30) days of such occurrence.
- B. Subcontractor's current governing board must authorize the execution of this Agreement. Subcontractor has the option of demonstrating such authority by either: 1) direct signature of a board member; or 2) any lawful delegation of such authority that is consistent with Subcontractor's bylaws.
- C. Where Subcontractor elects to delegate the signing authority to the chief executive officer (CEO), NCIDC will accept a resolution specific to this Agreement.
- D. Subcontractor shall submit to NCIDC the Governing Board minutes from regularly scheduled meetings no later than thirty (30) days after the minutes are approved. Regularly scheduled meetings shall be in accordance with the Subcontractor's bylaws.

9. AUDITING STANDARDS AND REPORTS

A. Auditing Standards

Subcontractor must follow all audit requirements as set forth in OMB Circular A-133 and the 2013 CSD Supplemental Audit Guide. The 2013 Supplemental Audit Guide is attached herein as Exhibit D, Attachment I. The 2013 Supplemental Audit Guide may be accessed at <http://ncidc.org/statewide-operations/csbg-info>

B. Audit Reports

- a. Funds provided under this Agreement shall be included in an audit conducted in accordance with the provisions of OMB Circular A-133 for nonprofit and public agencies, standards promulgated by the American Institute of Certified Public Accountants (AICPA), and those standards included in "Government Auditing Standards, December 2011 Revision, as amended."
- b. Subcontractors falling below the federal funding threshold that mandates a single agency-wide audit in accordance with OMB Circular A-133 shall:

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- i. Submit an annual program-specific audit within nine months of the end of the Subcontractor's fiscal year; and
 - ii. Be subject to an audit and/or other fiscal- or program-specific review conducted by NCIDC or its agents, upon thirty (30) days written notice.
- 2) The financial and compliance audit report shall contain the following supplementary financial information: a combined statement of revenue and expenditures for each contract that presents, by budget line item, revenue and expenditures for the audit period and a description of the methodology used to allocate and claim indirect costs and any administrative cost pools.
- 3) The audit report must specifically mention that a review for compliance with OMB Circulars A-87 and A-122 was conducted.
- 4) Subcontractor shall submit to NCIDC one (1) printed copy the required audit report(s) and any management letter(s) issued by the accountant, within nine (9) months of the end of the Subcontractor's fiscal year, accompanied by a copy of the signed, final engagement letter between Subcontractor and the independent auditor.

If the Subcontractor's independent auditor is unable to meet this deadline, the Subcontractor shall submit to NCIDC a written request for an extension, which includes a copy of a letter from the independent auditor explaining the anticipated delay. NCIDC may grant an extension not to exceed thirty (30) calendar days from the original due date. The audit report(s) and all supplemental financial information are to be submitted to the following address:

**Northern California Indian Development Council, Inc.
241 F Street
Eureka, California 95501**

- 5) In the event an audit required under this Agreement has not been submitted in a timely fashion, NCIDC may impose sanctions as provided in OMB Circular No. A-133, to include:
 - a) Withholding a percentage of federal awards until the audit is completed satisfactorily;
 - b) Withholding or disallowing overhead costs;
 - c) Suspending advances and reimbursements until the audit is conducted; and/or
 - d) Terminating the contract.

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10. DELEGATE AGREEMENTS

Subcontractor may enter into delegate agreement (s) to perform part or all of the direct services covered under this Agreement. Prior to the commencement of subcontracted services under this Agreement, Subcontractor shall obtain board approval, to include but not be limited to, an assurance that the delegate agency agreement(s) shall comply with all terms, conditions, assurances, and certifications of this Agreement for the nonprofit and local governmental agencies performing services in the area(s) described in EXHIBIT A, SCOPE OF WORK, Section 1.

- A. Subcontractor shall provide written notification to the NCIDC within 60 (sixty) calendar days of execution of each delegate agreement the name of the delegate agency entity, its address, telephone number, contact person, contract amount, and program description of each delegate agency activity to be performed under this Agreement. This written notification shall also include a certification that, to the best of Subcontractor's knowledge, the delegate agency is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. For purposes of this certification of delegate agency eligibility, Subcontractor may rely on information provided via the Excluded Parties List System (EPLS), available at <https://www.sam.gov/portal/public/SAM/>.
- B. If NCIDC determines that Subcontractor has executed a delegate agreement with an individual or entity listed as disbarred, suspended, or otherwise ineligible on EPLS as of the effective start date of the delegate agreement, costs Subcontractor has incurred under the delegate agreement may be disallowed.
- C. Subcontractor remains responsible to substantiate the allowable and allocable use of all funds under this Agreement and to adopt fiscal control and accounting procedures sufficient to permit the tracing of funds paid to any delegate agency to a level of expenditure adequate to establish that such funds have not been used in violation of this Agreement. Subcontractor shall ensure that any delegate agreements under this Agreement contain all provisions necessary to ensure adequate substantiation and controls of the expenditure of such funds. Subcontractor may achieve this through detailed invoices, by periodic monitoring of delegate agency(s) program activities and fiscal accountability, by retaining a right of reasonable access to the delegate agency(s) books and records, or by any other method sufficient to meet Subcontractor's responsibility to substantiate costs required by OMB Circulars A-87, 122, and 133.
- D. In the event NCIDC suspends, terminates, and/or makes changes to the services to be performed under this Agreement, Subcontractor shall notify all of its delegate agencies in writing within five (5) days of receipt of notice of such action.

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- E. Subcontractor is the responsible party and shall remain liable for the performance of the terms, conditions, assurances, and certifications of this Agreement, without recourse to the NCIDC, regarding the settlement and satisfaction of all contractual and administrative issues arising out of delegate agreement(s) entered into in support of this Agreement, including disputes, claims, or other matters of a contractual nature as well as civil liability arising out of negligence or intentional misconduct of the delegate agency(s).

- F. Nothing contained in this Agreement shall create any contractual relation between NCIDC and any delegate agency, and no delegate agreement shall relieve the Subcontractor of its responsibilities and obligations hereunder. Subcontractor agrees to be as fully responsible to NCIDC for the acts and omissions of its delegate agency(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Subcontractor. The Subcontractor's obligation to pay its delegate agency(s) is independent from NCIDC's obligation to make payments to the Subcontractor. As a result, NCIDC shall have no obligation to pay or to enforce the payment of any moneys to any delegate agency.

11. INSURANCE

A. General Requirements

- 1) By execution of this Agreement, Subcontractor agrees that the below-required insurance policies and bond including Self Insurance, Workers' Compensation Insurance, General Liability Insurance, Vehicle Insurance, and a Fidelity Bond shall be in effect at all times during the term of this Agreement.

- 2) Subcontractor shall provide NCIDC with written notice at least thirty (30) calendar days prior to cancellation or reduction of insurance coverage to an amount less than that required in this Agreement.

- 3) In the event said insurance coverage expires at any time or times during the term of this Agreement, Subcontractor agrees to provide within thirty (30) calendar days prior to said expiration date a new Certificate of Insurance (ACORD 25) evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Agreement. The Certificate shall identify and name NCIDC as the Certificate Holder.

- 4) New Certificates of Insurance will be reviewed for content and form by NCIDC.

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- 5) In the event Subcontractor fails to maintain in effect at all times the specified insurance and bond coverages as herein provided, NCIDC may, in addition to any other available remedies, suspend this Agreement.
- 6) With the exception of workers' compensation and fidelity bond, NCIDC shall be named as additional insured on all Certificates of Insurance required under this Agreement.
- 7) The issuance of other NCIDC contracts, to include any cash advances and reimbursement payments, to the Subcontractor shall be contingent upon current insurance coverage being on file at NCIDC for this Agreement.
- 8) Should Subcontractor utilize a delegate agency(s) to provide services under this Agreement, Subcontractor shall indemnify and hold the NCIDC harmless against any liability incurred by that delegate agency(s).

B. Self-Insurance

- 1) When Subcontractor is a self-insured governmental entity, NCIDC, upon satisfactory proof, may waive the appropriate insurance requirements. To qualify for a waiver, an appropriate county or city risk manager shall sign a certification that shall contain assurance of the adequacy of the governmental entity's ability to cover any potential losses under this Agreement.
- 2) Subcontractor shall specify in writing a list of which coverage(s) will be self-insured under this Agreement and shall list all applicable policy numbers, expiration dates, and coverage amounts.
- 3) In the event that the Subcontractor's self-insurance coverage does not contain any changes from the prior year, NCIDC will accept a certified letter signed by authorized personnel stating that no changes have occurred from last year. This letter is due at the time of Agreement execution or within thirty (30) days of expiration of insurance.

C. Workers' Compensation Insurance

- 1) Subcontractor shall have and maintain for the term of this Agreement workers' compensation insurance issued by an insurance carrier licensed to underwrite workers' compensation insurance in the State of California.
- 2) Subcontractor shall submit either an applicable Certificate of Insurance or a Certificate of Consent to Self Insure issued by the Director of the Department of Industrial Relations to CSD as evidence of compliance with

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the workers' compensation insurance requirement prior to issuance of an initial cash advance.

D. Commercial or Government Crime Coverages (Fidelity Bond)

- 1) Subcontractor shall maintain a commercial crime policy. If Subcontractor is a public entity, Subcontractor shall maintain a government crime policy. The commercial crime policy or government crime policy (hereinafter "fidelity bond") shall include the following coverages or their substantial equivalents: Employee Dishonesty/Theft, Forgery or Alteration, and Computer Fraud.
- 2) Subcontractor's fidelity bond coverage limits shall not be less than a minimum amount of four percent (4%) of the total amount of consideration set forth under this Agreement.
- 3) Subcontractor shall submit an applicable Certificate of Insurance (ACORD 25) to the NCIDC as evidence of compliance with the fidelity bond requirement prior to issuance of an initial cash advance.

E. General Liability Insurance

- 1) Subcontractor shall have and maintain for the term of this Agreement general liability and property damage insurance for a combined single limit of not less than \$1,000,000 per occurrence.
- 2) Subcontractor shall submit to NCIDC an applicable Certificate of Insurance naming NCIDC as an additional insured, as evidence of compliance with general liability insurance requirement prior to issuance of an initial cash advance.

F. Vehicle Insurance

- 1) Subcontractor shall have and maintain for the term of this Agreement vehicle insurance in the amount of \$1,000,000 for each person and each accident for bodily injury and in the amount of \$1,000,000 for each person and each accident for property damage.
- 2) When employees use their own vehicles to perform duties within the scope of their employment, Subcontractor shall have and maintain for the term of this Agreement non-owned and hired automobile liability insurance in the amount of \$1,000,000 for each person and each accident for bodily injury and \$1,000,000 for each person and each accident for

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property damage. (Driving to and from work is not within the scope of employment.)

- 3) Subcontractor shall submit to NCIDC an applicable Certificate of Insurance, naming NCIDC as an additional insured as evidence of compliance with the vehicle insurance requirement prior to issuance of an initial cash advance.

12. AGREEMENT CHANGES

A. Amendment

Formal amendments to this Agreement are required for changes to: the term, total cost or Maximum Amount, scope of work, and/or formal name changes. No amendment to this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

If Subcontractor intends to request a formal amendment to this Agreement, the request must be submitted on a NCIDC 425.B, Justification for Contract Amendment/Modification, no later than forty-five (45) days prior to the expiration of the Agreement term. NCIDC Form 425.B can be located at <http://ncidc.org/statewide-operations/csbg-info> and a copy attached to this exhibit as Attachment D-II.

B. Modification

- 1) Any request(s) for modification to Fiscal Data or Attachment II (Exhibit B), must be submitted on a NCIDC 425.B, Justification for Contract Amendment/Modification, no later than forty-five (45) calendar days prior to the expiration date of this Agreement.
- 2) Subcontractor may modify problem statements, program activities, and/or delivery strategies, to either: a) add program(s) not previously projected on the NCIDC 801, or b) remove program(s) previously projected on the NCIDC 801 for which no clients have been served and the program was terminated.
- 3) Any increase to out-of-state travel costs or equipment purchases will require a request for modification to the budget and must be submitted on a NCIDC 425.B, Justification for Contract Amendment/Modification.

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13. SYSTEM SECURITY REQUIREMENTS

Subcontractor shall, in cooperation with NCIDC, institute measures, procedures, and protocols designed to ensure the security of data and to protect information in accordance with California State Administrative Manual (SAM) Section 5310, Item 4, and such other State and Federal laws and regulations as may apply. The parties hereto agree to the following requirements, obligations, and standards:

A. General Information/Data Description

The interconnection between NCIDC and Subcontractor is a two-way data exchange. The purpose of the data exchange or direct input is to deliver application records for payment processing or contract activity reimbursement.

B. Services Offered

Data exchange between NCIDC and Subcontractor shall be handled through two methods: 1) a Subcontractor user must authenticate to upload data files in a secure socket layer connection; or 2) a secure user interface that is only available to Subcontractor users with a unique software authentication to see the login window and also secure tunnel between NCIDC and the Contract user.

C. Data Sensitivity

- 1) The sensitivity of data exchanged between NCIDC and Subcontractor may vary from sensitive to personal or confidential because of personal data such as social security numbers to private data, e.g., family income level, family member name, etc. No personal financial information, i.e., credit card, bank account numbers, shall be stored or exchanged in the data exchange sessions.
- 2) Appropriate levels of confidentiality for the data shall be based on established data classification (see SAM Section 5320.5).

D. Information Exchange Security

- 1) The security of the information being passed on this primary two-way connection shall be protected through the use of encryption software. The connections at each end shall be secured plus the physical location the application systems shall be within a controlled access facilities. Individual users may not have access to the data except through their systems security software that is logged in detail or controlled. All access

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will be controlled by authentication methods to validate the approved users.

- 2) Standards for secure transmission may be accomplished through such means as certificates, secure socket layer, etc., and storage of the data with encryption, if applicable.
- 3) Both NCIDC and Subcontractor shall maintain security patches and anti-virus software updates.

E. Trusted Behavior Expectations

NCIDC's application system and users shall protect Subcontractor's application system/data, and the Subcontractor's application system and users shall protect NCIDC's application system/data, in accordance with the Privacy Act and Trade Secrets Act (18 U.S. Code 1905) and the Unauthorized Access Act (18 U.S. Code 2701 and 2710).

F. Formal Security Guidelines

NCIDC's Computer Security Policy and Subcontractor's policy and procedures for internal controls shall conform to the standards and obligations for the protection of data established herein and shall ensure their implementation.

G. Incident Reporting

Any party discovering a security incident shall report it in accordance with its incident reporting procedures. Subcontractor shall within twenty-four (24) hours of discovery report to NCIDC any security incident contemplated herein. Policy governing the reporting of Security Incidents is detailed in section D 2 – L of the SAM Management Memorandum entitled, "Safeguarding Against and Responding to a Breach of Security Involving Personal Information."

H. Audit Trail Responsibilities

Both parties are responsible for auditing application processes and user activities involving the interconnection. Activities that will be recorded include event type, date and time of event, user identification, workstation identification, success or failure of access attempts, and security actions taken by system administrators.

I. Data Sharing Responsibilities

All primary and delegated secondary organization that share, exchange, or use personal, sensitive, or confidential data shall adhere to all NCIDC's policies and

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SAM guidelines. If data sharing is accomplished via interconnectivity of an application system, then data sharing must be certified to be secure by both parties.

14. SCHEDULE OF ATTACHMENTS

The following attachment to this exhibit is hereby attached and incorporated by this reference:

ATTACHMENT I CSD SUPPLEMENTAL AUDIT GUIDE

ATTACHMENT II CSBG Justification for Subcontract Amendment
NCIDC 425 B (Rev. 03/12) with Example and Instructions

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ATTACHMENT I

CSD SUPPLEMENTAL AUDIT GUIDE

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ATTACHMENT II

CSBG SUBCONTRACT AMENDMENT

CSBG Justification for Subcontract Amendment
Example and Instructions

NCIDC 425 B (Rev. 03/12)