

03. Attachment B-1 - DHS Addendum to Standard Terms and Conditions

DEPARTMENT OF HUMAN SERVICES ADDENDUM TO STANDARD TERMS AND CONDITIONS

A. DEFINITIONS

Capitalized terms used in this addendum that are not otherwise defined in these provisions have the meanings specified in the Contract to which they are attached.

For the purpose of this addendum, the following definitions apply:

“Commonwealth” means the Commonwealth of Pennsylvania.

“Contract” means the underlying agreement, including, but not limited to, a contract, grant agreement, lease, purchase order, cooperative agreement, intergovernmental agreement, or reimbursement agreement, between Contractor and the Commonwealth for the provision or performance of services, supplies, goods, leased space, construction, or other activity.

“Contractor” means any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction, or other activity, under a Contract with the Commonwealth.

“Department” means the Department of Human Services.

B. APPLICABILITY

This addendum supplements the standard terms and conditions. Certain terms contained in this addendum may not be applicable to all the goods, supplies, services, leased space, construction, or other activity Contractor may furnish or perform through its Contract with the Department. These provisions apply only to the extent applicable to the services provided by Contractor pursuant to this Contract.

C. CONFIDENTIALITY

The parties shall not use or disclose any information about a recipient of the services to be performed under this Contract for any purpose not connected with the parties’ Contract responsibilities except in accordance with applicable state and federal law. If no state or federal law applies, the parties shall not disclose such information except with written consent of the recipient or the recipient’s personal representative.

D. INFORMATION

During the period of this Contract, the Contractor shall make all information obtained by the Contractor through work on the project available to the Department immediately upon demand and in the manner requested by the Department. If requested, the Contractor shall deliver to the Department background material prepared or obtained by the Contractor incident to the performance of this Contract. “Background material” means original work, papers, notes, and drafts prepared by the Contractor to support the data and conclusions in final reports and other deliverables, and includes, but is not limited to, completed questionnaires, materials in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings, and all data directly related to the services being rendered. Contractor’s obligations under this provision will survive termination or expiration of the Contract, and will last as long as the information is retained.

E. CERTIFICATION AND LICENSING

Contractor shall obtain all necessary licenses, certifications, and permits from Federal, State, and Local authorities permitting it to carry out its activities under this Contract.

F. PROGRAM SERVICES

Definitions of service, eligibility of recipients of service, and other limitations in this Contract are subject to modification by amendments to Federal, State, and local laws, regulations, and program requirements without further notice to the Contractor.

G. CHILD PROTECTIVE SERVICE LAWS

In the event that the Contract calls for services for a child (or children) as defined in 23 Pa.C.S. § 6303, the Contractor shall comply with the provisions of the Child Protective Services Law (23 Pa.C.S. Ch. 63) and all associated regulations promulgated (55 Pa. Code Ch. 3490).

H. PRO-CHILDREN ACT

1. The Contractor shall comply with Public Law 103–227, Title X, Part C, also known as the Pro–Children Act of 1994 (“Act”), 20 U.S.C. § 7183, which imposes restrictions on smoking in facilities where certain federally-funded children’s services are provided. The Act prohibits smoking within any indoor facility (or portion of such facility), whether owned, leased, or contracted for, that is used for the routine or regular provision of: (i) Kindergarten, elementary, or secondary education or library services; or (ii) health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds, whether directly or through State or local governments.
2. Federal funds include grants, cooperative agreements, loans or loan guarantees, and contracts. The Act does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug and alcohol treatment, or facilities where Special Supplemental Nutrition Program for Women, Infants, and Children (commonly known as WIC) coupons are redeemed.

I. MEDICARE/MEDICAID REIMBURSEMENT

1. If services are furnished by the Contractor, subcontractors, or organizations related to the Contractor or its subcontractors, and such services may be claimed by the Commonwealth for Medicare/Medicaid reimbursements, in whole or in part, Contractor shall comply with 42 C.F.R. Part 420 and shall include a clause in its subcontracts or other agreements requiring its subcontractors or organizations related to the Contractor or its subcontractors to comply with 42 C.F.R. Part 420. Compliance with 42 C.F.R. Part 420 includes, but is not limited to, the following:
 - a. Preservation of subcontracts, books, documents, and records until the expiration of four years after the services are furnished under the Contract or subcontract.
 - b. Full and free access to subcontracts, books, documents, and records by the Commonwealth, the U.S. Comptroller General, the U.S. Department of Health and Human Services, and the duly authorized representatives of these entities.
2. Contractor certifies under penalty of law that it has not been debarred, suspended, terminated, or excluded from the Medicare, Medicaid, or any other State or Federal health care program. If a debarment, suspension, termination, or exclusion occurs during the Contract term, Contractor shall immediately notify the Commonwealth.

J. TRAVEL AND PER DIEM EXPENSES

Contractor shall not be allowed or paid travel or per diem expenses except as provided for in Contractor’s Budget and included in the Contract amount. Any reimbursement to the Contractor for travel, lodging or meals under this Contract must be at or below state rates as provided in Management Directive 230.10, Commonwealth Travel Policy, as may be amended, unless the Contractor has higher rates that have been established by its offices/officials, and published prior to entering into this Contract. The Contractor must support higher rates by submitting a copy of the minutes or other official documents to the Department. Documentation in support of travel and per diem expenses must be the same as required of state employees.

K. PROPERTY AND SUPPLIES

1. Contractor shall obtain all supplies and equipment for use in the performance of this Contract at the lowest practicable cost and shall purchase by means of competitive bidding whenever required by law.
2. Title to all property furnished in-kind by the Department remains with the Department.
3. Contractor has title to all personal property acquired by the Contractor, including purchase by lease-purchase contract, for which the Contractor is to be reimbursed under this Contract. Upon expiration or termination of this Contract, disposition of such purchased personal property that has a remaining useful life must be made in accordance with the following provisions:

- a. The Contractor and the Department may agree to transfer any item of such purchased property to another contractor designated by the Department. Cost of transportation will be borne by the contractor receiving the property and will be reimbursed by the Department. Title to all transferred property will vest in the designated contractor. The Department shall reimburse the Contractor for its share, if any, of the value of the remaining life of the property in the same manner as provided under subsection b below.
 - b. If the Contractor wishes to retain any items of such purchased property, depreciation tables must be used to ascertain the value of the remaining useful life of the property. The Contractor shall reimburse the Department in the amount determined from the tables.
 - c. When authorized by the Department in writing, the Contractor may sell the property and reimburse the Department for its share. The Department may fix the minimum sale price it will accept.
4. All property furnished by the Department or personal property acquired by the Contractor, including purchase by lease-purchase contract, for which the Contractor is to be reimbursed under this Contract is deemed "Department Property" for the purposes of subsections 5, 6, and 7 of this section.
 5. Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, preservation, and insurance of Department Property so as to assure its full availability and usefulness.
 6. Unless otherwise approved in writing by the Department, Department Property shall be used only for the performance of this Contract.
 7. If the Contractor is indemnified, reimbursed, or otherwise compensated for any loss, destruction or damage to Department Property, the Contractor must, at the Department's direction, use the proceeds to replace, repair, or renovate the property involved; credit such proceeds against the cost of the work covered by the Contract; or reimburse the Department.

L. DISASTERS

If, during the term of this Contract, the Department's premises are so damaged by flood, fire, or other Acts of God as to render them unfit for use, the Department will have no liability or obligation to the Contractor during the period of time there is no need for the services provided by the Contractor, except that the Department will render compensation to which the Contractor was entitled to under this Contract prior to such damage.

M. SUSPENSION OR DEBARMENT

If Contractor is suspended or disbarred by the Commonwealth, 4 Pa. Code §§ 60.1-60.7, as may be amended, applies.

N. CONTRACTOR'S CONFLICT OF INTEREST

The Contractor certifies that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services or furnishment of goods or supplies under this Contract. The Contractor shall not knowingly employ any person having such interest during the term of this Contract. Contractor certifies that no member of the Board of the Contractor or any of its officers or directors has such an adverse interest.

O. INTEREST OF THE COMMONWEALTH AND OTHERS

No officer, member, or employee of the Commonwealth and no member of its General Assembly, who exercises any functions or responsibilities under this Contract, may participate in any decision relating to this Contract that affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested; nor may any such officer, member, or employee of the Commonwealth or member of its General Assembly have interest, direct or indirect, in this Contract or its proceeds. The Contractor shall comply with all applicable requirements of the State Adverse Interest Act, 71 P.S. §§ 776.1-776.8, as may be amended.

P. TUBERCULOSIS CONTROL

For all services provided in a state mental health ("MH") facility or a state intellectual disability ("ID") center, the Contractor shall comply with the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis

in Health Care Settings, 2005, issued by the Centers for Disease Control and Prevention (“CDC”), as these guidelines may be updated. The guidelines are available at http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5417a1.htm?s_cid=rr5417a1_e.

The Department shall provide any required testing free of charge from the state MH/ID facility. If the Contract service provider has written proof of testing within the last six months, the MH/ID facility will accept this documentation in lieu of administration of a repeat test. If a health care worker employed by the Contractor is unwilling to submit to the test, the Contractor must complete the risk assessment questionnaire. If a Contractor or its health care worker refuses to comply with the guidelines issued by the CDC, the Department may terminate its Contract without liability.

Q. CONTRACTOR RESPONSIBILITY TO EMPLOY DHS CLIENTS

1. If Contractor was required to submit a Contractor Partnership Program (“CPP”) Submittal with its bid, quote, application, or proposal, the Contractor’s CPP Submittal and the CPP requirements set forth in the solicitation become part of the Contract. Contractor shall submit any proposed changes to its CPP Submittal to the CPP Division of the Department’s Office of Income Maintenance. If the Contract is assigned to another contractor, the new contractor must maintain the CPP requirements of the original Contract.
2. Contractor shall, within 10 days of receiving the Effective Date of the Contract, register in the Commonwealth Workforce Development System (CWDS).
3. As specified in the solicitation, Contractor shall submit Quarterly Employment Reports to the Office of Income Maintenance Central Office of Employment and Training, CPP Division. On a quarterly basis, Contractor shall provide information on the use and outcomes of hiring strategies and demonstrating good faith efforts to hire TANF beneficiaries.
4. If Contractor is non-compliant, the CPP Division will contact the Contract Administrator to request corrective action.

R. OLDER ADULTS PROTECTIVE SERVICES ACT APPLICATION TO CONTRACTOR

Contractor shall submit information obtained within the preceding one-year period for any personnel providing services in a facility, as defined in 35 P.S. § 10225.102, who will have or may have direct contact with residents of a Department-operated facility or unsupervised access to their personal living quarters in accordance with the following:

1. Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information) a report of criminal history information from the Pennsylvania State Police or a statement from the State Police that their central repository contains no such information relating to that person. The criminal history record information will be limited to that which is disseminated pursuant to 18 Pa.C.S. 9121(b)(2) (relating to general regulations). The Contractor shall apply to the State Police for clearance at its own expense. The forms are available online at <https://epatch.pa.gov/home>.
2. Where the Contractor’s personnel is not, and for the two years immediately preceding the date of execution of a Contract, has not been a resident of this Commonwealth, the Contractor must submit, at its own expense, a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation’s (“FBI”) appropriation under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109). Information regarding the fingerprinting process for FBI background checks mandated by OAPSA is available at <https://www.aging.pa.gov/organization/advocacy-and-protection/Pages/Criminal-History-Background-Checks.aspx>. The information obtained from the criminal record check shall be used by the Department to determine the individual’s eligibility. The Contractor must submit the determination to the Department before Contractor’s personnel provides services at the Department’s facility. The Department shall insure confidentiality of the information. The provisions of 18 Pa. C.S. § 9121(b)(2) will not apply if the request for a report of Federal criminal history record information is made pursuant to this section.

For personnel hired after execution of the Contract, the Contractor shall forward all State Police Criminal History Background Reports or FBI background checks of its personnel, as applicable, when received. The Contractor’s

failure to forward State Police Criminal History Background Reports or FBI background checks, as applicable, within 60 days of receipt may result in termination of the Contract. Personnel shall not have direct contact with residents of a Department-operated facility or unsupervised access to their personal living quarters until Contractor provides the Department with the applicable background check.

S. DATA BREACH OR LOSS

The Contractor shall comply with all applicable data protection, data security, data privacy, and data breach notification laws, including, but not limited to, the Breach of Personal Information Notification Act, 73 P.S. §§ 2301-2330, as amended.

T. OTHER FEDERAL REQUIREMENTS

The Contractor shall comply with the requirements set forth in this section when: (i) the Contract is funded in whole or in part with federal funds; and (ii) the listed requirements are applicable to the Contractor and to the services or supplies provided under the Contract.

1. The Contractor shall comply with the following, as applicable:
 - a. 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
 - b. 45 C.F.R. §§ 75.330, Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms;
 - c. 45 C.F.R. § 75.331, Procurement of Recovered Materials;
 - d. 45 C.F.R. § 75.364, Access to Records;
 - e. 45 C.F.R. § 95.615, Access to System and Records; and
 - f. 45 C.F.R. § 75.112, Conflict of Interest.
2. If the Contract is a prime construction contract in excess of \$2,000, the Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, as amended, as supplemented by U.S. Department of Labor regulations, 29 C.F.R. Part 5, and the Copeland "Anti-Kickback" Act, 40 U.S.C. § 3145, as supplemented by U.S. Department of Labor regulations, 29 C.F.R. Part 3, when required by Federal program legislation,
3. If the Contract amount is \$100,000 or more and the Contract involves the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701-3708, as supplemented by U.S. Department of Labor regulations, 2 C.F.R. Part 5.
4. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the Contractor or subcontractor wish to enter into a contract with a small business firm or nonprofit organization regarding the substation of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, the Contractor shall comply with 37 C.F.R. Part 401 and any implementing regulations issued by the awarding federal agency.
5. If the Contract amount is \$150,000 or more, the Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended.
6. If the Contract amount is \$100,000 or more, the Contractor shall comply with the Bird Anti-Lobbying Amendment, 31 U.S.C § 1352.
7. In accordance with 45 C.F.R. § 75.308(c)(1)(ii), the Department must request federal approval before executing any Key Personnel changes. The Contractor shall notify the Department of all such changes to enable the Department to comply with this requirement.
8. The Department may not make a contract award to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 and 12689, Debarment and Suspension. Contractor certifies under penalty of law that it is not listed on the government-wide exclusions in SAM.
9. Except as provided under 41 C.F.R. Part 60, if this Contract meets the definition of "federally assisted

construction contract” in 41 C.F.R. Part 60-1.3, the Contractor shall comply with the following provision:

During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation

with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

U. LOBBYING CERTIFICATION AND DISCLOSURE

(applicable to contracts \$100,000 or more)

Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds. With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, all recipients shall certify that they will not use federal funds for lobbying and shall disclose the use of non-federal funds for lobbying by filing required documentation. The Contractor shall complete and return a "Lobbying Certification Form" and, if applicable, a "Disclosure of Lobbying Activities form" with their signed Contract, which form(s) will be made attachments to the Contract.

V. AUDIT CLAUSE

This Contract is subject to audit in accordance with the attached Audit Clause. Contractor shall comply with all the requirements set forth in the Audit Clause.