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CHILD PROTECTION SERVICES  
STANDARDS FOR EFFECTIVE PRACTICE

**STANDARDS FOR ADMINISTRATION**

**10.10 CONTRACT DEVELOPMENT**

**Council on Accreditation Standards**

The Council on Accreditation Standards G11.6 (Service Agreements), G11.7 (Contractual Relationships); G11.8 (Additional Contracting Requirements for Organizations that Purchase Services); and G11.9 (Quality Monitoring of Purchased Services) link to Standard 10.10 *Contract Development*.

**Administrative Code**

The Ohio Administrative Procedures Manual, chapter 4000, Sections 4410 - 4417 address Standard 10.10 *Contract Development*.

**I. Philosophy**

Children and Family Services Agencies (CFSA) contract with organizations and providers to meet multiple goods and service needs. Contract goods and services may be sought for organizational purposes, such as maintenance of the facility or the provision of staff training. CFSA's also contract with providers for the primary purpose of responding to, and providing for the needs of children and families.

Contracts must be developed, executed, monitored, and evaluated to assure that the needs of the CFSA, children and families are adequately addressed. Contracts should define the responsibilities of the involved parties for purposes of accountability, and ensure adherence to the laws and regulations governing contracts. Contracts should be thorough, complete, and address specific criteria as appropriate to the type of goods and services sought.

**II. Outcome**

Contracts developed clearly state mutual expectations, measurable outcomes, products and costs.

**III. Evaluation**

FACSSIS events, CPOE and the Federal Health and Human Services outcomes may be considered when evaluating this standard. In addition, the CFSA may consider the following:

- written process in place that responds to Standard 10.10, *Contract Development* recommendations;
- extent to which formal agency Contract Development process was used.

## IV. Standards for Implementation

### A. Internal Controls

CFSA should implement internal controls, effectively monitor, maintain, and evaluate the administration and operation of the contract process. While the internal control mechanisms selected by individual CFSA may differ from one another, all CFSA, to be effective, should have a universal set of internal control elements. Without internal controls, CFSA will be unable to maintain effective oversight of the contracting process.

- 1) The CFSA should have established policies and procedures that address internal control elements, and should identify staff responsible for assuring these elements are addressed. The internal control elements should include, but not be limited to, the following:
  - a. drafting, issuing, responding to RFP questions, soliciting and evaluating proposals;
  - b. in-house authorization process to access contracted services;
  - c. executing contracts;
  - d. reviewing the legal aspects of the contract (e.g., boilerplate language and amendments);
  - e. approving contract amendments;
  - f. accounting (general) oversight responsibility including invoicing, monitoring and reporting fiscal expenditures, and spending limitations;
  - g. quality assurance activities including monitoring invoices against contract deliverables and reporting on contract performance (monthly, quarterly, semi-annually, annually);
  - h. client grievance process/customer complaints.

### B. Scope of Work

In developing service contracts, the CFSA should clearly define the service components to establish accountability between the two parties. These service components should be written as part of the Scope of Work. The scope of work identifies in clear and measurable language who is responsible for each aspect of the contract.

- 1) When developing the Scope of Work, staff must be clear on what the CFSA wants to purchase, its expectations of the vendor/provider, and what must occur for the service or product to be considered adequate. The Scope of Work should cover, at minimum, the following areas:
  - a. Service/Goods Components;
  - b. Provider/CFSA Responsibilities;
  - c. Reporting/Quality Assurance Components;
  - d. Fiscal/Administrative Components and Financial Controls.

### **C. Contract Incentives**

CFSA's create incentives as part of the contract development process to motivate the provider to achieve contract performance standards. Both positive and negative contract incentives should be carefully examined to determine which incentive(s) is most viable based on the nature of the specific goods and services under negotiation. CFSA's who choose to use contract incentives are obligated to share these with the contract provider as part of the contract development process (can be used as an attachment). Contract incentives must be defined in the body of the contract.

- 1) The CFSA should check with their finance department to identify any possible funding limitations when providing contract incentives.
- 2) There are several types of contract incentives. The CFSA should consider the following:
  - a. Lump Sum Bonus: lump sum bonus is given when the vendor/provider or client meets and/or exceeds established measurable contract deliverables and/or outcomes.
  - b. Set-asides: the Set-a-side contract incentive is based on the type of service provided. Short-term focus rather than long-term performance objectives are optimal for set-aside incentives. With set-asides, the CFSA holds back a portion of the contract until such time the provider meets the defined contract performance goals.

### **D. Failure to Renew the Contract**

The most common negative contract incentive available to CFSA's is their right not to renew a contract. CFSA's that choose this option should carefully document the reasons associated with their dissatisfaction, attempts to ameliorate the problems/conflicts and the decision not to renew.

### **E. Liquidated Damages**

Liquidated damages may be used by CFSA's as a means of limiting the contract "failure" rate. CFSA's use liquidated damages in the body of the contract by stipulating that failure to achieve contracted program goals will result in the provider reimbursing a portion of the contract back to the CFSA.

### **F. Performance Bond**

- 1) CFSA's can use performance bonds that require the provider to furnish a bond or a certified check for a percentage of the total contract amount. Should the provider be unable to deliver on contracted program goals, the bond is forfeited to the CFSA.
- 2) The use of performance bonds as a negative contract incentive may be problematic for small operations where the provider does not have surplus cash to put up the required percentage of the contract bond.

### **G. Boiler Plate Language**

Consistent language in the body of the contract reinforces uniformity and standardization in conducting business with service providers. Boiler plate language provides legal protection for the CFSA as a result of the county prosecutor's approval of the language as meeting minimum legal standards

under the law. To assure CFSA's have adequate legal protection and increase the likelihood that there is uniformity and consistency in the execution of service/goods contracts, the following Boiler Plate language may be considered.

- 1) Standard boiler plate language as recommended for use by Ohio's custodial CFSA's should not be adopted by the CFSA without specific legal review by the CFSA's designated legal staff or prosecuting attorney. The Standard Boiler Plate language that may be considered for use by a CFSA's when developing a contract is as follows. It may include, but not be limited to:
  - a. Incorporation by Reference
 

The following documents are hereby incorporated by reference and thereby made part of this Contract:

    - i. Exhibit A: (title, list number of pages);
    - ii. Exhibit B: (title, list number of pages);
    - iii. Exhibit C: (title, list number of pages).
  - b. Amendment
 

This Contract may only be amended by the express, written, and signed Contract of both parties.  
Provider is responsible for giving the CFSA written notification at least thirty days prior to program changes that result from changes in funding, program goals, staffing, or service design. Failure to agree in writing on such changes will invalidate the Contract at the end of the thirty day notice.
  - c. Assignment & Subcontracting
 

Provider shall not transfer, subcontract, or assign any rights, duties or liabilities under this Contract to any other individual, corporation, or other entity without the prior written consent of the CFSA, which may be withheld at the CFSA's discretion.  
Subject to this restriction, the rights and obligations arising under this Contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Or...(last sentence)...Any attempted transfer, subcontract, or assignment of rights, duties, or liabilities under this Contract without the prior written consent of the CFSA shall be void.
  - d. Applicable Law & Jurisdiction
 

This Contract shall be governed by, and the rights of the parties shall be determined according to, the laws of the State of Ohio.  
Both parties agree that the jurisdiction of any legal action arising from this Contract shall be within the state or federal courts of the State of Ohio.
  - e. Severance
 

If any paragraph or provision of this Contract or its application to any party is found invalid or unenforceable by a court of competent jurisdiction, such invalidity will not affect other provisions or applications of this Contract, which can be given effect without the invalid provision of application, and to this end the parties agree that the provisions of this Contract are and will be severable. If either party shall consider that such event shall constitute a major change to the intent of this Contract, that party may propose to the other appropriate modifications of this Contract to restore it to its original intent. In such case, if a Contract on modification is not reached within ninety days, the party making such proposal may terminate the Contract under the provisions herein (or submit to arbitration, if arbitration is permitted or mandated under the Contract).
  - f. Non-Waiver of Rights

Failure by the CFSA to enforce any provision of this Contract does not constitute a waiver of the right of the CFSA to enforce any future failure of the Provider to comply with that or any other provision of this Contract.

g. Order of Precedence

In the event of an inconsistency between the provisions of this Contract, its attachments and exhibits, the inconsistency shall be resolved in the following order:

- i. this Contract;
- ii. the Exhibits hereto in alphabetical order, with Exhibit A taking precedence over Exhibit B, etc.;
- iii. other documents referenced in this Contract;
- iv. other documents referenced in the Exhibits hereto;
- v. RFP; and
- vi. provider's proposal.

h. Termination

i. Natural Completion

This Contract shall terminate of its own accord at the conclusion of its term on (date) unless amended for an extension as described in Section \_\_\_\_\_ above.

ii. Convenience

This Contract may be terminated by either party upon notice in writing delivered upon the other party 30 days prior to the effective date of termination.

iii. Cause

This Contract may be terminated by the CFSA if the Provider becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or changes its structure so as to adversely affect its ability to perform its obligations under this Contract. Such termination will occur on the date the CFSA becomes aware of such relief being sought by the Provider or such event having occurred.

Nonperformance by the Provider of any terms of this Contract or failure to maintain performance standards as stated in this Contract shall constitute default by the Provider and cause for termination.

iv. Continuing Obligations

Termination pursuant to the provisions of this Contract will not relieve either party from the liabilities, obligations, or benefits already accrued under its terms. The Provider is responsible to cease any cost incurring activities upon the date of termination.

Neither Party will be liable to the other for any loss of prospective profits, funding or expenditures, investments, incidental, consequential, punitive or liquidated damages or any similar type of future or speculative damages regardless of their nomenclature.

The parties further agree that should the Provider become unable for any reason to complete the work called for under this Contract, that such work as the Provider has completed upon the date of its inability to continue the terms of this Contract shall become the property of the CFSA, and further the CFSA shall not be liable to tender and/or to pay to the Provider any further compensation after the date of the Provider's inability to complete the terms hereof, which date shall be the date of termination unless extended upon request by the CFSA.

Notwithstanding the above, the Provider shall not be relieved of liability to the CFSA for damages sustained by the CFSA by virtue of any breach of the Contract by the Provider; and the CFSA may withhold any compensation to the Provider for the purpose of set-off until such time as the amount of damages due the CFSA from the Provider is agreed upon or otherwise determined.

i. Entirety of Contract

This Contract and the Exhibits hereto constitute the entire Contract between the CFSA and the Provider. There are no promises, terms, conditions, or obligations other than those contained herein. This Contract supersedes and cancels all previous communications, representations or Contracts either written or oral, between the parties to this Contract related to the same subject matter. No oral or written Contracts not included herein are binding upon either party.

j. Counterparts

This Contract may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and each of these counterparts shall constitute one and the same instrument. It shall not be necessary in making proof of this Contract to produce or account for more than one such counterpart.

k. Descriptive Headings

The descriptive headings in this Contract and its table of contents are inserted for convenience and administrative reference only, and are not intended to indicate all of the matters following them. Accordingly, they shall not control or affect the meaning, interpretation, or construction of any of the provisions hereof.

l. Independent Contractor

The Provider shall be and remain an independent contractor and shall not act as an agent for the CFSA, nor have the authority to commit or bind the CFSA without prior written Contract.

Nothing in the Contract will be deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership or formal business entity of any kind, and the rights and obligations of the parties will be limited to those expressly set forth herein.

m. Force Majeure

If performance by either party pursuant to this Contract is delayed or impaired by reason of matters beyond the control of the performing party, including, without limitation, acts of God; war; riots; acts of civil or military authorities in their government or contractual capacity; fires; floods; nuclear incidents; quarantine restrictions; strikes; delays in transportation; shortages of cars, fuel, labor or materials, then performance by that party will be excused to the extent of the duration of such occurrence or the direct effects thereof.

n. Indemnification

The Provider shall protect, defend, and indemnify and hold harmless the CFSA, \_\_\_\_\_ County, and its Board of Commissioners from and against any and all claims, demands, judgments, costs, expenses and attorney's fees in connection with damages, direct and indirect, and all claims arising out of the Provider's acts, omissions or conduct or those of its employees, officers, agents or independent contractors.

The Provider agrees to pay all damages, costs and expenses of the CFSA, its officers, agents, employees and Board of County

Commissioners in defending any action arising out of the aforementioned acts or omissions.

o. Conflict of Interest

This Contract in no way precludes, prevents or restricts the Provider from obtaining and working under additional contractual arrangement(s) with other parties aside from the CFSA, assuming that the contractual work in no way impedes the Provider's ability to perform the services required under this Contract.

The Provider at the time of entering into this Contract has no interest in nor shall it acquire any interest, direct or indirect, in any Contract which will impede its ability to perform the services under this Contract.

The Provider further agrees that there is no financial interest involved on the part of any CFSA officers or employees of the department involved in the development of the specifications for the negotiation of this Contract.

The Provider hereby certifies that it has disclosed any information that it possesses about any business relationship or financial interest that the Provider has with a CFSA employee, employee's business or any business relationship or financial interest that a CFSA employee has with the Provider or in the Provider's business.

p. Compliance With Laws

The Provider agrees to comply with all applicable federal, state, and local laws in the conduct of work hereunder. The Provider accepts full responsibility for payment of all unemployment compensation insurance premiums, worker's compensation premiums, all income tax deductions, pension deductions and any and all other taxes or payroll deductions required for the Provider and all employees, contractors or agents engaged by the Provider for the performance of work authorized by this Contract.

q. Equal Opportunity

The Provider shall take affirmative action to ensure that the Provider's applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

r. Term

This Contract shall be in effect from (date) through (date) .

s. Records Retention, Access and Monitoring:

All records relative to this Contract, including service plans, invoices, etc., as applicable, shall be retained for five years. Provider shall maintain client, service and financial records, books, payrolls, documents, accounting procedures, and practices necessary to sufficiently and properly reflect all services provided and all direct and indirect costs of any nature expended in the performance of this Contract. Such records which are directly pertinent to this Contract shall be subject to inspection, review, or audit by designated CFSA personnel or agents. Provider agrees that the CFSA staff or agent shall have direct access to the aforementioned records which document service delivery and expenses incurred. The CFSA will attempt to arrange a mutually convenient appointment for such inspection or audit.

t. Insurance

The Provider shall maintain at all times during the life of this contract liability insurance with a responsible company licensed to do business in the state of Ohio in an amount that will adequately secure the person and/or estates of CFSA's children and/or families against reasonably foreseeable accidents which could cause injury or death.

- u. Confidentiality  
The Provider and CFSA agree to comply with federal and state laws applicable to the CFSA concerning the confidentiality of CFSA's children and/or families. The Provider agrees that the use or disclosure of information concerning CFSA's children and/or families by any party for any purpose not directly related to performing its responsibilities in the administration of this contract is prohibited.
- v. Provider/Vendor Solicitation of CFSA Employees  
Provider/vendor warrants that for one calendar year from the beginning date of this contract with \_\_\_\_\_, provider/vendor will not solicit the CFSA employees to work for provider/vendor.
- w. Availability of Funds  
This contract is conditioned upon the availability of federal, state or local funds that are appropriated or allocated for payment of this contract. If fund are not allocated and available for the continuance of the function performed by provider/vendor hereunder, the products or services directly involved in the performance of that function may be terminated by the CFSA at the end of the period for which funds are available. CFSA will notify provider/vendor at the earliest possible time of any products or services that will, or may be affected by a shortage of funds. No penalty shall accrue to the CFSA in the event this provision is exercised and the CFSA shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- x. Billing and Payment  
Original invoices signed by the provider and required reports will be submitted by the \_\_\_\_\_. No payment will be made for any service either an initial invoice or a supplemental invoice which is submitted to the CFSA more than \_\_\_\_\_ calendar days from the end of the \_\_\_\_\_. The CFSA has the final authority in determining if an invoice is received timely and accurately.

For invoices which are received timely but not accurately, there will be no extension of the time limitations.

#### H. Provider Assurances

Including Provider Assurances as a contract exhibit provides assurances that the Provider will carry-out specific activities considered to be of the utmost importance to the CFSA. The following Provider Assurances may include, but not be limited to the following. Standard Assurances language as recommended for use by Ohio's CFSA's should not be adopted by the CFSA without specific legal review by the CFSA's designated legal staff or prosecuting attorney.

- 1) The CFSA should develop a Contract which, when executed (of which this Exhibit is a part), the Provider certifies that it does and will comply with the following statements:
  - a. Compliance with Title VI of the Civil Rights Act of 1964 and certifies that no qualified applicant for employment or services shall be denied employment or services or be subjected to discrimination because of any factor or condition such as creed or belief, gender, handicap, social or ethnic background, environmental or social conditions or infection with the Human Immunodeficiency Virus Spectrum (the term "applicant for services" as used in this exhibit includes volunteers and foster parents).

- b. That it is in compliance with all State and Federal laws prohibiting discrimination in employment and that it shall not discriminate in its employment practices or its purchasing of goods or services based on any factor or condition including, but not limited to, creed or belief, gender, handicap, race, social or ethnic background, environmental or social conditions.
- c. That all services under this Contract will be provided in the manner appropriate to ensure that the accessibility to services for any applicant for or recipient of services will not be limited by their special needs, status, or background including, but not limited to, gender, race, creed, color, religion, nationality, physical or mental handicap, age, or infection with the Human Immunodeficiency Virus Spectrum. Reasonable accommodations must be made as required under the Americans with Disabilities Act, Public Law 101-226.
- d. That the Provider agrees to maintain a drug-free workplace, which means that the site for the performance of work done by the Provider, in connection with this Contract, at which employees of the Provider are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
- e. That all applicants for or recipients of social services under this Contract have the right to make a complaint or file a grievance with the appropriate Provider worker or supervisor should adverse action be proposed or taken on their request for such services, and that all applicants will be informed of this right.  
The Provider also agrees to inform the \_\_\_\_\_ CFSA immediately if any complaint or grievance alleges discrimination or lack of access to services, violation of assurances A, B, and C, listed above.
- f. For all employees and volunteers, before they are left alone with children, the Provider will request record checks from the Ohio Bureau of Criminal Investigation (BCI), the sheriff of the county and the police department of the city, village or township within which the individual has lived or worked, if the location of employment is different from the residence.  
Fingerprints must be provided with the request for the record check to BCI and any sheriff's or police department that will use them in the check.  
If the applicant for employment, employee, or volunteer has not been a resident of Ohio for at least five years, BCI will be requested to provide information on him/her from the Federal Bureau of Investigations.  
No employee or volunteer who has been convicted or pleaded guilty to a violation of any of the sections of the Ohio Revised Code (O.R.C.) listed in O.R.C. section 5153.11.1(B)(1)(a) and of O.R.C. section 2919.24.4 shall have contact with, or be responsible for the care, custody, or control of, any child served under this Contract.
- g. All staff and volunteers who transport children will have a current, valid driver's license and, if using their own private vehicle, automotive liability insurance that will cover injury to the children and families. Evidence of licenses and insurance will be maintained in the employee's or volunteer's personnel file.
- h. There is automotive liability insurance coverage for all Provider vehicles in which children or clients are transported.
- i. All Provider employees will currently meet state/agency licensing requirements for the position(s) held. Documentation of these qualifications will be maintained in the personnel files.

## V. Financial Implications

Costs associated with the development and implementation of the contract for goods and services are as follows:

- a. contract development costs associated with the Request For Proposal are included in Standard 10.9 *Request For Proposal*;
- b. contract development costs are estimated at 40 hours @ \$71/hour = \$2,840 (costs will be higher for a managed care contract).