

## DHHS POLICIES AND PROCEDURES

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<b>Section VII:</b>	<b>Procurement and Contract Services</b>
<b>Title:</b>	<b>General Contracting Manual</b>
<b>Chapter:</b>	<b>Chapter 1; General Contracting Requirements</b>
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### **Purpose**

The purpose of this document is to provide guidance to the North Carolina Department of Health and Human Services (NC DHHS) staff as it relates to general contracting requirements. *(The term “contract” is used as an all-inclusive term for contracts, memorandum of agreements, etc.)*

### **Policy**

DHHS Office of Procurement and Contract Services provide written documentation relative to general contracting requirements. The requirements are detailed below in the *Implementation Section*.

### **Implementation**

#### **Requirements**

The following requirements apply to all of the contracts described in the DHHS Office of Procurement and Contract Services policies and procedures:

1. Each request for any type of contract must be preceded by a contract approval form with the proper sign-off(s), signifying internal approval and availability of funds. This formal process should be consistent at each division/facility/school/office, and shall include a contract justification memorandum.
2. All contracts, agreements, or other similar arrangements involving the expenditure of state and/or federal funds shall be in writing and signed by the authorized individual.
3. No contracts, regardless of amount, shall be entered into for more than three (3) years total, including extensions, without specific prior approval by DOA or ITS. All contracts must have beginning and ending dates and it is preferable for these dates to coincide with the state’s fiscal year.
4. All contractual agreements shall be governed by applicable and relevant state and federal laws.
5. Contracts may provide for an option to require a performance bond.
6. No public official or state employee is to benefit from any contract with the state.

7. A payment schedule including requirements of the contractor will be specified in the contract. True performance-based contracts may not follow the reimbursement requirements specified in the cash management plan. Payment will not be made for any portion of the work that has not been satisfactorily completed. Upon approval and written authorization, a contractor may be granted an exception and receive advanced funds. Those contractors must return funds for any portion of the work that has not been satisfactorily completed.
8. All contracts must include a “not-to-exceed” clause, the end result of which will limit the maximum expenditure for the term of that contract.
9. The effective date for the provision of contract services shall not precede the final date of signature. Any exceptions must have authorized approval.
10. In addition to the signature of the authorized individual who signs for the contractor (president, vice president, or equivalent), each contract will include the contractor’s federal tax ID number or social security number, mailing address, date of signature and witness thereof.
11. All contracts must be encumbered in the North Carolina Accounting System (NCAS), or entered into the e-procurement system, and entered in the DHHS Contracts System. Any exception to this requirement must be approved by the budget officer and division director.
12. All contracts must use performance-based contracting methods.
13. Contracts must go through a Center of Excellence (COE) review process as defined within each division/facility/school/office and approved by the DHHS Office of Procurement and Contract Services.

**Note:** Capital Improvement Construction contracts of any type (along with service agreement contracts covered by the state building commission statutes, and architect and engineering service contracts covered by the state building commission statutes, etc.) are the responsibility of the DHHS Office of Property and Construction. Contact their office if services of this type are required. See the DHHS Department Wide Policies of the [DHHS Office of Property and Construction](#) for further details and explanation.

**Contracts Not Allowed**

The following types of contracts will not be entered into by DHHS divisions/facilities/schools/offices:

1. Those that provide payment or other compensation to any employee of a DHHS divisions/facilities/schools/offices from any of the division's/facility's/school's/office's corresponding local agencies.
2. Those that provide direct payment to any employee of another division/facility/school/office, department, or state supported university. Such situations should be handled under dual employment guidelines. These situations are not subject to approval by the DHHS Secretary's Office, but must be in compliance with the current policies of the DHHS Office of State Personnel and the Office of State Budget and Management. "Individuals-on-loan" are included in this prohibition; no direct fee for service payments shall be made by the borrowing agency.
3. Those that would provide payment to any person or agency from another state, unless attached justification clearly describes why comparable expertise is not available within North Carolina, or vendor is selected through competitive procedures.

**Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement as Addendum to Standard Contract**

The following requirements apply to contracts that must be enhanced to comply with Standards for Privacy and Security of Individually Identifiable Health Information at 42 CFR part 160 and 164, subparts A and E.

1. In addition to general contract requirements described in this manual, DHHS agencies that are designated as HIPAA Covered Health Care Components are required to develop an agreement that reflects additional requirements for ensuring the privacy and security of individually identifiable health information that is shared with contractors.
2. The privacy and security requirements shall be set forth in an addendum to the DHHS standard contract and shall be entitled "Business Associate Addendum". Specifications in this agreement shall be consistent with HIPAA requirements and shall include:
  - Obligations of Business Associate
  - Permitted Uses and Disclosures
  - Assurance of Availability, Confidentiality and Integrity
  - General Terms and Conditions

See [Privacy Policies](#) and the [HIPAA web site](#) for further information or clarification

## Review of Purchases and Service Contracts for Safety and Health Concerns

The DHHS Division of Human Resources, Safety and Benefits Section has developed a departmental policy to address purchases and contracts to assure that:

- Items purchased for the department and entities contracted by the department comply with applicable safety and health standards and do not expose department employees to safety and health hazards.

All contracts must comply with the departmental safety policy. See the [Safety and Benefits, Review of Purchases and Service Contracts for Safety and Health Concerns Policy](#) for detailed requirements and contact information if you have any questions about the policy or its requirements.

### Individual/Business Name(s) Not to be Used in Federal Grant Applications

Division/office/facility/school programs that request federal funds through applications for grants shall not specifically identify any subcontractor or subgrantee by individual or business name in the application package unless otherwise specified by the grant application. Procurements by the state are governed by competitive standards, therefore the identification of a specific subcontract or subgrant recipient precludes competition and is prohibited and shall not be part of the grant application.

### Ethics/Integrity/Responsibility

1. **Ethics:** Ethics and ethical practices are a major concern in the realm of public purchasing today. While laws and rules mesh to provide a mechanism for public purchasing, only people can make it work. In purchasing, as in all fields, there are values of pride and worth, there are standards and ideals, and there are specifics of conduct and performances. Impediments to process must be detected early and safeguards provided at all levels. This applies both to purchasing personnel and the vendor community.

It becomes imperative, therefore, that all public management and purchasing personnel be entirely cognizant of the necessity for ethical behavior. It takes only the slightest hint of impropriety to cast doubt on behavior. Sometimes, it may be even more of a perception than an actual event.

2. **Integrity:** Fairness and impartiality in all phases of the process are essential ingredients in public purchasing. Interaction with vendors and peers must be open, honest, and objective.

Like all service functions, purchasing's justification is the quality of the service it renders. The process cannot be both effective and self-serving because the two (2) are incompatible. In the case of public purchasing, utmost fairness is required in expending

public funds. The result of favoritism extended to either user or seller is the same. The practice is not permissible. No matter how strongly a user may prefer a particular product to another, functionally equivalent products must be given every reasonable consideration. We must commit and adhere to fair and open competition.

Integrity is a principal stock in trade for the public purchaser. Integrity is manifested by fairness, openness and impartiality. It can be tarnished by even the slightest appearance of impropriety. Therefore, it is incumbent upon every purchaser to become familiar with NC General Statute 133-32 which prohibits the giving and/or receiving of gifts or favors including "Business Lunches."

3. **Responsibility:** If any agency contracts for the purchase or lease of any commodities, printing or services contrary to statutes, or rules adopted there under, such contract shall be void and of no effect. In addition, the executive officer of that agency shall be personally liable for the costs thereof.

See [DHHS Conflict of Interest](#) policy for further details and guidelines for state employees.

### **Performance Based Contracting**

1. All DHHS contracts must be performance-based and include the following:

Use the *Elements of PBC~Measures worksheet* as a guide when developing a scope of work.

- A. All contracts providing program related services must contain the five (5) elements listed. All other contracts must include the elements pertinent to the service being provided.
- B. All contracts must include performance measures. Program related contracts must contain input measures, output measures and outcome measures.
- C. It is recommended, but not required, to include demand measures, process measures, service quality measures and efficiency measures.

You will find the worksheet and a template on the DHHS [COE](#) web site within the Performance-based Contracting Tools.

2. COE Review

Each division/office/facility/school is responsible for appointing a COE chair. The COE chair will also serve as the division's/office's/facility's/school's representative on the DHHS COE. This person will be the point-of-contact in reference to contract information and will coordinate internal meetings and review of all contracts within their division/office/facility/school. The COE chair may, upon management approval, designate program representatives to review contracts.

3. General Contract Monitoring and Oversight

The division/office/facility/school must have some form of monitoring schedule in place for each contract. The DHHS Contract Administrator is responsible for ensuring the terms of the contract are acceptable and satisfactorily completed. Frequent monitoring and communication with the contractor is necessary to determine whether the terms and goal(s) of the contract will be met.

4. Contract Planning

It is essential that divisions/offices/facilities/schools develop a schedule and review plan for all contracts. The COE chair for the division/office, along with the contract manager(s) should review all contracts and renewal/end dates to set up a plan of action for COE review of all contracts. This will assist in developing time-lines needed for assessment of programs, the development, negotiations, and processing of new and renewal contracts.

See the [COE](#) website for information, instructions, examples and contract forms, templates, general terms and conditions, performance-based contracting (PBC) requirements, performance measures, sample amendments, supplemental material to required forms and miscellaneous information.

*For questions or clarification on any of the information contained in this policy, please contact [Office of Procurement & Contract Services](#). For general questions about department-wide policies and procedures, contact the [DHHS Policy Coordinator](#)*