Administrative Policy No. 13.25

Subject:	Vendor Agreements and Other Non-Standard Contracts
Information Contact:	Central Contracts and Legal Services (CCLS)
	Operations Support and Services Division
	MS 45811
	http://one.dshs.wa.lcl/fs/oss/ccs/Pages/default.aspx
Authorizing Sources:	Chapter 39.26 RCW, Procurement of Goods and Services
	Chapter 43.19 RCW, Department of Enterprise Services (DES)
	Chapter 43.105 RCW, Office of the Chief Information Officer (OCIO)
	HIPAA Rules 45 CRF Parts 160, 162, and 164
	OCIO Investment Policy No. 121
	Information Technology Security Standards Manual
Effective Date:	October 20, 2017
Revised:	November 7, 2024
Approved By:	**Original signed by Pearlette J. Ramos**
	Senior Director, Office of Justice and Civil Rights

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Purpose

This policy establishes basic requirements governing transactions between the Department of Social and Health Services (DSHS) and any vendors that require DSHS, as a condition of doing business with them, to sign any form of agreement that does not consist of DSHS-approved standard terms and conditions.

This policy, and any procedures or guidelines referenced, are intended for internal use only. The policy is not intended, nor can it be relied upon, to create any substantive or procedural rights enforceable by any party involved in matters with the department.

Background

Existing DSHS administrative policy 13.10 requires that all DSHS contracts be created in the agency contracts database (ACD) using a standard contract format with approved terms and conditions designed to minimize and mitigate the DSHS's exposure to certain contract risks.

Vendor agreements are those agreements presented to DSHS by vendors who condition doing business with them on DSHS's acceptance of the vendor's own terms and conditions. Because vendor agreements, by definition, do not comply with the requirement in administrative policy 13.10 to create all DSHS contracts in the ACD on approved contract formats, central contracts and legal services is establishing this policy to better manage and mitigate the risks associated with entering into such agreements.

Scope

This policy applies to all employees and organizational units of DSHS in the conduct of actions subject to the "authorizing sources" listed above, including:

- Vendor agreements and non-standard contracts for information technology goods and services, including licensing and software maintenance agreements
- Vendor agreements and non-standard contracts for other goods and services
- Interlocal agreements not containing the DSHS general terms and conditions.

Additional Guidance
Administrative policies:
- Administrative policy 13.10, central contracts and legal services
- Administrative policy 13.11, monitoring contractor performance
- Administrative policy 13.12, competitive solicitations and procurements
- Administrative policy 13.13, insurance requirements for contracts
- Administrative policy 13.16, performance-based contracting
- Administrative policy 13.23, identifying business associates and business associate agreements
- The DSHS guide to contracting
- DSHS annual purchasing delegation memo
- CCLS ACD process for recording vendor agreements
- CCLS vendor agreement review form

Definitions

Administration means the responsible DSHS administration, division, office, program, or similar organizational entity.

Agency contracts database (ACD) is the system used by DSHS for producing, tracking, and monitoring all DSHS client service contracts, data sharing agreements, Interlocal (interagency) and intergovernmental agreements, and all contracts for goods and services (other than purchase orders for operational goods and services addressed by administrative policy 13.08).

Central contracts and legal services (CCLS) means the contracting authority for DSHS. Organizationally, it is in the contracts, legal, and background checks division of the facilities, finance, and analytics administration. DSHS administrative policy 13.10 charges CCLS with responsibility for establishing and maintaining statewide DSHS policies and procedures governing all contracts for DSHS.

The **Behavioral Health Administration (BHA) and Developmental Disabilities Administration (DDA) facilities** include Western state hospital, child study and treatment center, eastern state hospital, and the special commitment center under BHA; Fircrest school RHC, Rainier school RHC, Lakeland Village RHC, and Yakima valley school RHC under DDA.

Contract means a legally enforceable agreement for goods, services, or both, including information technology services.

Contract format means an electronic or hard copy contract template either developed or approved by CCLS, or both. A contract format includes but is not limited to data elements with general information (for example, the name of the contractor, start and end dates of the contract, and the total maximum consideration of the contract), general terms and conditions, and special terms and conditions. All approved contract formats are available in the ACD for use by authorized staff.

Division director means the DSHS division director, or functional equivalent, with managerial oversight authority and responsibility for contracting staff and processes in a given administration. For BHA and DDA facilities, authority for managerial oversight rests with the applicable facility's chief executive officer or superintendent.

End user license agreement or **click-through agreement** means an agreement that is entered into when an individual user is required to indicate his or her acceptance of the vendor's electronically presented terms and conditions by checking or "clicking," via mouse or keyboard entry or voice command, an on-screen box, button, or other graphic marked with words or other indicia that indicate the user's acceptance and agreement.

Key contract coordinator means the individual(s) designated by the division director responsible for contracting in a given administration to be the liaison between the administration or facility and CCLS. The key contract coordinator has specific, direct responsibilities for DSHS contracting processes that are identified under administrative policy 13.10.

Protected health information (PHI) means individually identifiable health information about a client that is transmitted or maintained by a DSHS health care component in any form or medium. PHI includes demographic information that identifies the individual or about the individual on which basis it is reasonable to believe the information could be used to identify

the individual. Individually identifiable health information in DSHS records about an employee, or others who are not clients, is not protected health information. See administrative policy 5.03 for provisions relating only to PHI of clients.

Purchase order means a standard TRACKS-generated ordering document that includes standard DSHS-approved purchase order terms and conditions. Purchase orders serve as contracts governing the transactions they cover. When a DSHS purchase order is accompanied by a vendor agreement with additional terms and conditions beyond those of the purchase order, the additional terms and conditions would constitute a vendor agreement under this policy.

Signing authority means the authority to sign contracts within the scope of this policy or administrative policy 13.10 on behalf of DSHS.

Vendor agreement or **non-standard contract** means a non-DSHS drafted, created, or issued contract or agreement for the purchase of goods, services, or both, that (1) includes the vendor's or other entity's own preferred terms and conditions or (2) does *not* include all relevant DSHS standard terms and conditions from an ACD contract format. End user license agreements and click-through agreements that a user must accept prior to installation or download of software or hardware constitute vendor agreements. When a DSHS purchase order is accompanied by any document with additional terms and conditions beyond those of the purchase order, the additional terms and conditions also constitute a vendor agreement. Note: Non-standard contracts include state or other governmental agency contracts that do not utilize DSHS general terms and conditions.

Policy Requirements

A.   Authority to sign

No DSHS staff may sign any vendor agreements or non-standard contracts on behalf of DSHS except in accordance with this policy. Vendor agreements and non-standard contracts that do not meet all the requirements outlined below in section B must be submitted to CCLS, in accordance with section E below, for review and signature.

B.   Administration authority

Administrations may enter into and sign vendor agreements without prior CCLS review only when all of the following conditions are met:

1. The goods or services covered by the vendor agreement were procured in compliance with the relevant competitive solicitation or sole source requirements of chapter 39.26 RCW;

2. The total value of the vendor agreement is less than $100,000;

3. The vendor will not have unsupervised access to any DSHS client under the terms of the vendor agreement; and

4. The vendor will not have access to any protected health information (PHI) under HIPAA or to any other DSHS category 3 or 4 data (as those categories are defined in the DSHS information security standards manual).

C.   Administration specific vendor agreement policy

All administrations must develop and maintain written policies or guidelines to govern their review, execution, management, monitoring, processing, handling and retention of vendor agreements and other non-standard contracts.

Administration vendor agreement guidelines must include all of the following:

1. A process to ensure all vendor agreements that are required by this policy to be submitted to CCLS for review are so submitted.

2. A process to ensure administration staff review and conduct an initial risk assessment for all vendor agreements they sign.

3. A process to ensure notification, when applicable, to the appropriate staff when a new vendor agreement is executed by administration contracts staff.

4. Designation of administration staff tasked with authorization and responsibility for conducting, evaluating, and documenting risk assessments on vendor agreements.

5. Designation of administration staff who are delegated authority to sign, on behalf of the administration, those vendor agreements that meet all the requirements above in section B of this policy.

6. Requirement that administration staff who execute, manage, monitor, or track vendor agreements must complete appropriate contract training requirements.

7. Identification of assigned responsibility, once the agreement has been executed, for managing the vendor agreement or non-standard contract and monitoring vendor performance.

8. Identification of assigned responsibility for document retention of vendor agreements and risk assessments. For end user license agreements and click-through agreements,

documentation must include the date and source of the non-standard contract as well as a written copy of the agreement.

D.   Risk assessments

Each administration must define a process within their vendor agreement guidelines that ensures adequate consideration and mitigation of the level of risk exposure associated with each vendor agreement, particularly under any of the following circumstances:

1. DSHS is sharing data of any kind under the agreement.

2. Vendor will have access to DSHS systems.

3. DSHS obligations under the agreement are unclear or ambiguous.

4. Vendor requires DSHS to treat its vendor agreement as confidential or prevents disclosure by DSHS in the event of a public records request.

5. The vendor's terms and conditions include any of the following:
    a. Payment prior to performance or receipt of deliverables
    b. Vendor may alter the terms of the agreement without prior DSHS agreement or without notice to DSHS
    c. The term of the agreement exceeds 2 years, or it is automatically renewed
    d. Limitations on DSHS' ownership of work product
    e. Early termination fees, other fees, or liquidated damages
    f. One-sided or unfair cancellation policy
    g. Limitation, disclaimer, or exclusion of warranty (e.g., product or services offered only "AS-IS")
    h. Limitation or disclaimer of liability for the vendor
    i. DSHS indemnification of vendor
    j. Customer's (i.e., DSHS') purchase order terms and conditions are considered "null and void"
    k. Jurisdiction for agreement disputes is outside the United States, or not in Washington state.

E.   CCLS review procedure

The administration's appropriate key contract coordinator must request a review of the vendor agreement by CCLS whenever any of the requirements of Section B above have not been met. To request review by CCLS, the key contract coordinator must first review the vendor agreement for administration specific concerns, then the administration must complete section 1 of the [CCLS vendor agreement review form](#) and submit the form, vendor agreement, and any

other documentation required for review via its key contract coordinator to CCLS. CCLS will review the request and the vendor agreement and proceed as follows:

1. If no major risk factors are identified, CCLS will execute the vendor agreement on behalf of the administration.

2. If risk factors are identified, CCLS will complete section 2 of the vendor agreement review form explaining what risks were identified and return the form to the administration's key contract coordinator.

3. The administration may elect to proceed, by checking the appropriate box in section 3 of the vendor agreement review form to indicate that it:
   a. Accepts identified risks and wishes to enter into the agreement as written.
   b. Has had administration staff further negotiate language with the vendor to address or mitigate identified risks.
   c. Has engaged its assistant attorney general to further negotiate with vendor to address or mitigate identified risks.
   d. Requests CCLS contracts counsel further negotiate with vendor to address or mitigate identified risks.

4. The division director, or, in the case of the BHA and DDA facilities, the chief executive officer, superintendent, or other designated executive management, must sign the vendor agreement review form indicating approval of the administration's decision. The administration will then return to CCLS the signed form and, when applicable, a copy of the revised terms agreed to by the vendor after negotiation.

5. CCLS will proceed according to the administration's election. However, CCLS will not execute any vendor agreement containing terms or conditions that violate federal or state law, or DSHS or Department of Enterprise Services (DES) policies, procedures, or guidelines.

6. CCLS will enter the vendor agreement records into the ACD for vendor agreements signed by CCLS. Administration staff will remain responsible for monitoring and documenting their monitoring of the administration's vendor agreements in accordance with administrative policy 13.11.

F.   Saving vendor agreements in the ACD

1. All vendor agreements must be recorded in and saved to the agency contracts database. Administrations must follow the [CCLS process for recording vendor agreements](#) in the ACD. There may be instances where a vendor requires DSHS signature but does not sign their own vendor agreement. However, to the extent possible, each vendor agreement

record entered into the ACD and retained by DSHS should show the vendor's signature in addition to DSHS signature.

2. End user license agreements and click-through agreements must be printed or otherwise electronically recorded and saved in the ACD, prior to or at the time they are agreed to, in order to ensure DSHS retains an accurate record of the agreement.

3. For vendors who do not already have a contractor profile created in the ACD, if administration staff are unable to obtain a complete contractor intake form (DSHS form no. 27-043) (or, at minimum, a valid federal tax identification number) from the vendor prior to entry in the ACD, the key contract coordinator must create a proxy ID in the CCLS proxy id table for purposes of entering the vendor agreement into the ACD. Once a contractor intake form has been received, the ACD profile should be updated and the proxy ID table listing removed.