

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICE

SUBJECT: Contract Modification

EFFECTIVE: This policy circular shall become effective on July 1, 2004 and shall be implemented as new contracts commence or existing contracts are renewed thereafter.

PROMULGATED: February 24, 2005

SUPERSEDES: Policy Circular P1.10, promulgated September 13, 2002.

PURPOSE: The purpose of this policy circular is to outline the Department's requirements to obtain a Contract Modification. All material changes to the approved Contract shall be discussed and agreed to in writing by all parties through use of the Contract Modification process.

I. SCOPE

This policy circular applies to all Third-Party Social Service and Training Contracts.

II. DEFINITIONS

In addition to the terms defined in the DHS Contract Policy and Information Manual, the DHS Contract Reimbursement Manual, or the Standard Language Document (P2.01), the following terms, when capitalized, shall have meanings as stated.

Annex B Budget means the Attachments to the Contract Standard Language Document and Standardized Agreement containing financial information.

Budget Category means one of the major groupings of cost identified in the Contract Budget Annex B form.

Closeout means the process, whereby the Departmental Component reconciles the amount of funding paid to a Provider Agency during the Contract term against the final Report of Expenditures (ROE) or the latest ROE submitted by the Provider Agency to the Departmental Component, and also the final process by which the Department of Human Services determines that all applicable administrative actions and all required work of the Contract have been completed by the Department and the Provider Agency.

Cluster means one or more service-related Programs designated by the Departmental Component, and identified in the Contract.

Contract means one of the Department's social service or training Contracts with a Provider Agency. Terms and conditions of the Contract are included in the Standard Language Document, Annex (es), appendices, attachments and Contract Modifications (including any approved assignments and subcontracts) and supporting documents. The Contract constitutes the entire binding agreement between the Department and the Provider Agency.

Contract Modification means the formal procedures entailing the Department's written approval on the P1.10 Contract Modification Form (Attachment A) to allow certain programmatic and/or financial changes in the Contract during the Contract term.

Cumulative Increase means the combined effect of all budget changes within a Budget Category.

Departmental Component means the division, bureau, commission, office, or other unit within the Department responsible for the negotiation, administrative review, approval, and monitoring of certain social service or training contracts.

Equipment means an article of nonexpendable tangible personal property having a useful life of more than two years and an Acquisition Cost of \$5,000 or more per unit.

Flexible Limits means an upper dollar limit which is established for each Budget Category, and which may not be exceeded without an approved Contract Modification. Flexible Limits are determined by adding an amount to the approved Annex B Budget.

Letter of Approval means the written correspondence between the Departmental Component and Provider Agency authorizing a Contract Modification approval pending submission and approval of a P1.10 Contract Modification Form (Attachment A).

Line Item means each entry of cost within a Budget Category listed in the Annex B Budget (e.g., the salary or wages for each position listed under the Budget Category of Personnel).

Mail means letter, e-mail or legible facsimile (fax) transmission of applicable documents.

Net Cost means "Total Cost" less "Revenue".

Program means a specific service. A Program is generally represented by each column in the Contract Expense Summary of the Annex B Budget.

Reimbursable Ceiling means the cost of the Contract to the Departmental Component and the maximum payment to the Provider Agency.

Revenue means the total income generated by the Provider Agency from its Programs and activities.

Total Cost means all costs, excluding profit, but including the cost of approved equipment.

III. POLICY

A. Contract Modifications are required under the following circumstances:

1. Change in the Reimbursable Ceiling.
2. Increase in Total Cost.
3. Change in the Contract term.
4. Change in any Budget Category which exceeds the Flexible Limits as stated in this policy under Section III. E.
5. Transfer of budgeted cost across DHS Contracts, or Clusters as identified in the Contract.
6. Transfer of federal and/or other revenue across DHS Contracts, or Clusters as identified in the Contract.
7. Change to the method of allocating General and Administrative costs.
 - a) This includes any changes in an approved indirect cost rate, its application, or increases/decreases to the indirect cost amount allocated to the contract.
8. The addition or deletion of any Budget Category (A through M individually) from the Budget.
9. The addition of Line Items within Budget Category (B) Consultants and Professional Fees.
10. The addition of any item of equipment not in the approved budget, above \$5,000 per item.
11. Change in the payment methodology.
12. Change in the payment rate(s).
13. Change in target population.
14. Change in contracted performance standards.
15. Change in contracted level of service.
16. Change in contracted staff/client ratios.

17. Change in subcontractors providing direct services or subcontracted direct services. (See Standard Language Document P2.01, section 5.02)

B. Authority and Exceptions

1. This Policy shall not supercede existing State of New Jersey or Department of Human Services policies including but not limited to those on Procurement, Revenue Sharing, Clusters, Reporting, Closeout, Audit Policies, the DHS Contract Policy and Information Manual, the DHS Contract Reimbursement Manual, or the Standard Language Document (P2.01) except that:
 - a. The Annex B Contract Expense Detail for Personnel (reporting of salary line items) is required for the third quarter expense report and the final Report of Expenditure (ROE). It is not required for the first quarter or second quarter interim expense reports.
2. The Department reserves the right to require Provider Agencies to submit a detailed Annex B Budget and supporting documentation, indicating all adjustments to Budget Categories as an accompaniment to a Contract Modification, and including, but not limited to, the following conditions:
 - a. Inclusion of new initiatives;
 - b. Under-spending based on an expenditure report analysis;
 - c. A new Provider Agency;
 - d. An unsatisfactory audit;
 - e. A failure to meet Contract performance indicators as defined in the Contract;
 - f. A reporting problem; and
 - g. An agency requiring intensive monitoring or technical assistance.
3. Failure to complete a required Contract Modification to the applicable Departmental Component may result in:
 - a. Adjustments to the contract terms and conditions;
 - b. Notice of Contract Default;
 - c. Recoupment of Funds; and
 - d. Other adjustments or actions deemed necessary.

- C. Procedures for Requesting a Contract Modification or a Pre-Approval
1. A Contract Modification may be requested by the Provider Agency or the Department, and must be completed by the Provider Agency.
 2. For Pre-Approval requests, which are at the option of the Provider Agency, the Provider Agency may telephone or mail the Departmental Component requesting approval to proceed with a Contract Modification. An approved request shall be followed-up in writing by the Provider Agency and responded to in writing via a Letter of Approval pending standard Contract Modification procedures.
 3. When a Contract Modification for cost-related services is initiated, the Provider Agency shall submit a revised Annex B Budget, the applicable P1.10 Contract Modification Form, Attachment A and any other Contract documents affected.
 4. When a Contract Modification entails any change in rate information, the appropriate Departmental Component will complete a revised Annex B-2: Contract Rate Information Summary.
 5. The Departmental Component shall forward copies of the approved P1.10 Contract Modification Form and attachments to the Provider Agency and other offices as necessary for inclusion as part of the official contract file.
 6. The Department must approve a Contract Modification prior to its effective date. Generally, a Contract Modification is not retroactive. There are five exceptions to this requirement:
 - a. In accordance with Policy Circular P9.02, Department and Provider Agency Monitoring of Budgeted Units of Service;
 - b. In a Cost-Related Contract where payment is based on a provisional rate, a retroactive Contract Modification may be required in conjunction with a revision of the provisional rate or the establishment of the final rate;

- c. In a Non-Cost Related contract where payment is based on a rate established by an outside rate setting authority such as a home state, county, or other prime user;
- d. When the Department must do so in order to meet specific administration and/or operational responsibilities or to promote contract efficiencies; or
- e. For all Contracts executed and entered into as of July 1, 2004 through and including the Promulgation date of this Policy.

D. Approvals, Effect and Notification

- 1. Contract Modifications shall be approved or disapproved, in whole or part, by an official of the Departmental Component authorized to perform this function. This official shall sign the Contract Modification Form and shall enter the approved effective date.
- 2. A Provider Agency's use of Contract funds does not establish the Department's level of participation in the financing of successor Contracts.
- 3. The last approved Contract Budget and program annex (es) for the Contract term are the documents of record, and they will be utilized when conducting the Closeout process. (Refer to P7.01 Contract Closeout).
- 4. A Contract Modification request must be received by the Contract Administrator prior to the last month of the Contract term. Subsequent requests will be reviewed at the discretion of the Departmental Component.
- 5. Within 10 business days from the date of receipt of a Contract Modification Request, the Department shall approve or reject the Contract Modification. If the request is still under consideration at the end of 10 business days, the Department will inform the Provider Agency in writing as to the reasons, and provide a date when a decision may be expected, such date not to exceed 30 calendar days from the date of receipt of fully completed materials. A Contract Modification shall be deemed to be approved, if within 30 calendar days from the date of receipt of fully completed materials, there is no written Departmental response.

6. Letters shall be presumed to be received by the addressee no later than five business days from the postmark, after being sent to the last address known by the sender. Transmissions which are not electronically date stamped shall be presumed to be received by the sender no later than five business days after being sent to the last address known by the sender.

E. Granting of Flexibility for Budget Management

1. A Provider Agency shall be granted flexibility in managing Contract budgets based on the establishment of Flexible Limits.
2. A Provider Agency shall be allowed to reallocate funds, within the Flexible Limits, without notice to a Departmental Component, and without a Contract Modification, except where any single condition specified in III.A has occurred.
3. Flexible Limits shall apply only to an executed Contract.
4. Flexible Limits shall change only when a Contract Modification has been approved.
5. When Flexible Limits have been reached or are expected to be exceeded, a Provider Agency must request a Contract Modification by following the procedure specified in this Policy.
6. A Departmental Component is not responsible for the effect of Provider Agency misapplication or miscalculation of Flexible Limits.
7. Separate Flexible Limits must be developed and applied for each Budget Category as described in III.E.8:
 - a. Within a Cluster.
 - b. For Direct Costs (All costs which are not classified as General and Administrative).
 - c. For General and Administrative costs.

8. Applicable Budget Categories and Allowable Budget Modification Flexible Limits are:
- a. Personnel Category, Category A
(This Budget Category has been split, for modification purposes to treat Fringe Benefits separately from other Personnel Line Items).
 - 1) A Cumulative Increase in total salaries, excluding Fringe Benefits, of more than five percent (5%) from the approved Annex B Budget.
 - 2) A Cumulative Increase in Fringe Benefit costs of more than fifteen percent (15%) from the approved Annex B Budget.
 - b. Other Than Personnel, Categories B, C, D, F
(These Budget Categories have been consolidated for modification purposes except that "Specific Assistance to Clients" is maintained as a separate Budget Category).
 - 1) A Cumulative Increase in the combined value of Other Than Personnel categories * of more than ten percent (10%) from the approved Annex B Budget.

The 10% Flexible Limit is applied only to the combined value of the following Annex B Budget categories, (B+C+D+F) x 10%:
 - *(B) Consultants & Professional Fees
 - *(C) Materials and Supplies
 - *(D) Facility Costs
 - *(F) Other
 - c. Specific Assistance to Clients, Category E
 - 1) All changes below the approved Annex B Budget require a modification.
 - 2) A Cumulative Increase of more than fifteen percent (15%) from the Approved Annex B Budget requires a Contract Modification.

d. Equipment, Category I

1. An item of equipment not included in the approved Annex B Budget of over \$5,000 per item requires a Contract Modification.
 2. A Cumulative Increase of more than ten percent (10%) from the Approved Annex B Budget requires a Contract Modification.
9. Flexible Limits for the Budget Categories above are determined by calculating an amount based on the allowable Total Cost for the Budget Category as contained in the approved Annex B Budget. The allowable Total Cost for the Budget Category shall be adjusted by an amount as stipulated in III.E.8 to create the Flexible Limit.
10. The calculation of the State's share of allowable costs, and of all other funds and revenues within the budget, shall be managed in the same manner upon which those funds and revenues are budgeted, regardless of whether a Contract Modification impacts Total Cost, Net Cost or Reimbursable Ceiling.
- a. Where it is clear that State funding is the "last dollar in" as in deficit funded contracts, the State's share of the modification shall always be presumed as the last dollar to be allocated.
 - b. Where State and other funds are Budgeted through the use of matching percentages, as in an approved federal financial participation rate (i.e. Title XIX), the State share of the modification shall be similarly calculated.

F. Required Forms

1. Contract Modifications which have no budget impact require Attachment "A" the P1.10 Contract Modification Form.

2. Contract Modifications which have a budget impact require Attachment "A", the P1.10 Contract Modification Form, and an Annex B Budget.
3. Contract Modifications which affect the Personnel Budget Category also require the Annex B Contract Expense Detail for Personnel. (This detail is also required with the initial budget and with the final Report of Expenditures).
4. The Annex B Contract Expense Detail for Other Than Personnel is required when a line item is added within Budget Category (B), Consultants and Professional Fees.
5. A Worksheet (attached) is provided as an example of the intended calculation of Flexible Limits under this Policy. The Provider Agency may request confirmation of Flexible Limits at any time. Such requests and confirmations do not serve, on their own, to alter Flexible Limits. The Worksheet is not a required document for any Contract Modification, or any other purpose.

Issued by:

Gretchen Jacobs, Director
Office of Contract Policy and Management

Jacob Eapen, Assistant Commissioner
Budget, Finance, Administration, Real
Estate and Information Technology

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
P1.10 CONTRACT MODIFICATION FORM

Provider Agency Name _____ Modification # _____
Fiscal-Year-End _____ Contract Term _____ thru _____

Contract # _____ Cognizant Contract: Yes _____ No _____
Division(s) affected by the Modification _____

Date of most recently approved Contract Modification: _____
Requested effective date for this Contract Modification: _____
Check applicable area(s) for modification:

- 1) _____ Change to the Reimbursable Ceiling: from _____ to _____
- 2) _____ Increase in Total Cost: from _____ to _____
- 3) _____ Change in the Contract term: currently from ___/___/___ to ___/___/___ to the revised term ___/___/___ to ___/___/___
- 4) _____ Change exceeding the Flexible Limits.
- 5) _____ Transfer of budgeted cost across DHS Contracts or Clusters.
- 6) _____ Transfer of federal and/or other revenue across DHS Contracts or Clusters.
- 7) _____ Change to the method of allocating G&A, the indirect cost rate and/or its application.
- 8) _____ Addition or deletion of an entire Budget category (A through M individually).
- 9) _____ Addition of Line Items within Budget Category (B) Consultants and Professional Fees.
- 10) _____ Equipment not in approved budget above \$5,000 per item.
- 11) _____ Change in payment methodology.
- 12) _____ Change in the payment rate(s)
- 13) _____ Change in target population
- 14) _____ Change in contracted performance standards
- 15) _____ Change in contracted level of service
- 16) _____ Change in contracted staff/client ratios.
- 17) _____ Change of Subcontractors providing direct services or change to subcontracted direct services.

Please attach an explanation

This form, its attachments and/or revised section(s) of the programmatic Annex A and/or the revised itemized Annex B Budget or Rate Information Summary, constitute this entire Contract Modification. The persons whose signatures appear below agree to this Contract Modification.

BY: _____
(Signature)

BY: _____
(Signature)

(Type name)

(Type name)

Title _____

Title _____

Provider Agency: _____

Departmental Component: _____

Date: _____

Date: _____

DATE EFFECTIVE: _____

SAMPLE WORKSHEET

NOT REQUIRED FOR CONTRACT MODIFICATIONS

Provider Name _____

Contract Number ___ - ___ - ___ (____)

Contract, Program or Cluster Name (if Clustered) _____

a **	b	c***	d	e	f ****	g	h*
TOTAL Agency G & A **	G & A Portion, as a Percent, borne by this Contract / Cluster	Currently Approved Annex "B" Budget	Allow able Modification Flexible Limits Percentage	Upper Budget Limit (c+(cxd))	Cumulative Changes Made to Date	Changes, this Request Only	Revised Current Budget Request (c+f+g)
Budget Category							
Salaries (A)		\$ 3,000,000	5%	\$ 3,150,000	\$ (174,450)		\$ 2,825,550
Fringes (A)		\$ 750,000	15%	\$ 862,500	\$ 112,500		\$ 862,500
Other Than Personnel (B,C,D & F)		\$ 150,000	10%	\$ 165,000	\$ 15,000		\$ 165,000
Specific Assistance to Clients (E)		\$ 50,000	15%	\$ 57,500	\$ 7,500		\$ 57,500
Equipment (I)		\$ 30,000	10%	\$ 33,000	\$ 3,000		\$ 33,000
Total Operating Costs		\$ 3,980,000			\$ (36,450)	\$ -	\$ 3,943,550
General & Administrative (G):							
Salaries (A)	\$ 1,000,000 27%	\$ 270,000	5%	\$ 283,500	\$ 13,500		\$ 283,500
Fringes (A)	\$ 500,000 27%	\$ 135,000	15%	\$ 155,250	\$ 20,250		\$ 155,250
Other Than Personnel (B,C,D & F)	\$ 100,000 27%	\$ 27,000	10%	\$ 29,700	\$ 2,700		\$ 29,700
Total for G&A Only	\$ 1,600,000	\$ 432,000			\$ 36,450	\$ -	\$ 468,450
Moved to Other Contracts, Programs or Clusters							
Total Cost		\$ 4,412,000			\$ -	\$ -	\$ 4,412,000
Less Revenue							
Net Cost		\$ 4,412,000			\$ -	\$ -	\$ 4,412,000
Profit							
Reimbursable Ceiling		\$ 4,412,000			\$ -	\$ -	\$ 4,412,000

*The "Revised Current Budget Request" is a cumulative amount and should include all amounts the Provider has previously moved, including amounts within the Flexible Limits.

** Total Agency G & A represents 100% of the Agency G & A irregardless of Division or Program. The calculation of allow able G & A may generally be a more complex manual process where G & A is fixed or controlled by factors outside the control of DHS. The percent is the portion of G & A borne by this contract / cluster.

*** Allow able costs only

**** Provides an example of the flexibility provided under P1.10 where Contract Modifications are not required.