

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 444 CONTRACT

ADMINISTRATIVE REQUIREMENTS

SUBCHAPTER A GENERAL PROVISIONS

§444.101 Definitions

The words and terms used in this chapter shall have meanings set forth in 40 TAC ch. 141 of this title (relating to General Provisions), unless the context clearly indicates otherwise.

The provisions of this §444.101 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.102 Applicability of Chapter

This chapter applies to all substance abuse programs funded by the Commission.

The provisions of this §444.102 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.103 Waivers

The Commission's executive director may grant a temporary waiver from a requirement in this chapter to a contractor or a group of contractors. All waivers must be requested in writing. A waiver shall not extend beyond the contract period during which it is granted. To be eligible for a waiver, the contractor must show that an alternative method is used to meet the intent of the rule and the services are not significantly affected. The executive director will set forth in writing the reason for granting or denying the waiver.

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SUBCHAPTER B FUNDING

§444.201 Applicability of Subchapter

The rules in this subchapter apply to all funding applicants that have not been identified through an executive order as exempt from the competitive process as delineated in §144.211 of this subchapter (relating to Other Funding Processes). The executive order will identify the reason for the exemption.

The provisions of this §444.201 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.202 Allocation of Funds

(a) Funds available for regional services will be allocated for each of the 11 Health and Human Services (HHS) regions through an approved statewide funding methodology.

(b) The Commission will establish terms and conditions needed to fulfill State and Federal funding mandates.

(c) The Commission will develop goals and identify services to be purchased based on its statewide service delivery plan as well as input from other interested parties.

The provisions of this §444.202 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.203 Competitive Procurement of Client Services

(a) The Commission will fund chemical dependency services through competitive and noncompetitive procedures in accordance with TEX. HEALTH & SAFETY CODE ANN. §461.0141 (Vernon 2001).

(b) Competitive procurement methods used by the Commission will include the request for proposal (RFP) and alternative solicitation processes.

The provisions of this §444.203 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.204 Selection Criteria for Request for Proposal

(a) The Commission will develop selection criteria for each request for proposal that reflect the identified goals and applicable State and Federal mandates. Selection criteria are designed to select applications that provide the best overall value to the State and provide the best outcome for service recipients.

(b) Selection criteria are listed in the request for proposal and will be approved by the executive director.

(c) The selection criteria will include:

- (1) program quality;
- (2) the cost of the proposed service;

(3) the scoring system(s) to be used, the weight assigned to each factor, and the minimum score required for consideration for funding; and

(4) additional factors in determining best value as specified in 1 TAC §391.121 (2003), including:

- (A) financial ability to perform services;
- (B) total long-term cost to the agency of purchasing services from the applicant;
- (C) regional service needs and priorities;
- (D) access for underserved areas and populations;
- (E) ability to fit within a regional continuum of services;
- (F) past performance, outcomes, and compliance; and
- (G) results of on-site reviews.

The provisions of this §444.204 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.205 Notice of Funding

The Commission will post a notice on the Commission's web site and on the State's electronic business daily that a request for proposal has been issued.

The provisions of this §444.205 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.206 Request for Proposal (RFP)

(a) The request for proposal will include:

- (1) goals describing the purpose of the solicitation;
- (2) a clear and accurate description of the services to be purchased;
- (3) all requirements that must be met for an application to be considered (eligibility criteria);
- (4) an estimate of the funds available;

- (5) applicable priorities and restrictions;
- (6) application forms, formats, instructions, procedures, and timeframes;
- (7) the selection criteria and the process used to evaluate proposals and select award recipients; and
- (8) the availability of technical assistance.

(b) Information requested from the applicant may include, but is not limited to:

- (1) identifying information;
- (2) documentation of legal basis for operation;
- (3) ownership or control information;
- (4) information on business transactions and relationships;
- (5) information on financial status; and
- (6) information on persons convicted of crimes.

(c) An applicant shall also disclose to the Commission in writing any pending or threatened litigation that might prevent the applicant from meeting contract requirements, if funded. This includes but is not limited to:

- (1) an action, suit, or proceeding before any court or governmental body, including environmental and civil rights matters; and
- (2) employee labor disturbances.

The provisions of this §444.206 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.207 Application

(a) An organization shall apply for funding using forms, formats, instructions, timeframes, and procedures specified by the Commission in the RFP and shall provide all requested information.

(b) The application shall be signed by the organization's authorized official. If funding for a coalition is requested, the application shall be signed by an authorized official of the organization acting as the fiscal agent of the coalition.

(c) Applications shall be submitted by mail or in person. Unless specifically allowed in the RFP, the Commission does not accept applications by facsimile or electronic transmission.

(d) Applications shall be received at the Commission by the date and time stated in the request for proposal. Late applications will not be accepted.

The provisions of this §444.207 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.208 Application Criteria

(a) An application shall not be considered for competitive funding unless the applicant meets the following criteria on the application due date and continues to meet them throughout the selection and funding process.

- (1) The applicant shall be established as a legal entity under State statutes and regulations.
- (2) The applicant shall be in compliance with any Commission agreed order.
- (3) The applicant shall be registered to do business in Texas and shall have a Texas address. A post office box address may

be used when the application is submitted, but the applicant must be able to conduct business out of a physical location in Texas before funds will be released.

(4) Staff members, including the executive director, of a public or nonprofit entity shall not serve on their employer's governing board.

(5) The applicant shall be in good standing with any State or Federal agency that has a contracting relationship with the applicant. If a State or Federal agency has suspended or terminated an applicant's contract for deficiencies in performance of the contract, that applicant is not eligible to apply through a request for proposal unless all issues have been satisfactorily resolved as demonstrated by written documentation from the State or Federal agency. Additionally, an applicant is not eligible if it is debarred from participation in any Federal assistance program.

(6) Applicants that have previously been funded by the Commission shall be in compliance with the following requirements:

(A) If the applicant has been suspended or terminated by the Commission at any time in the past, all issues shall be satisfactorily resolved (demonstrated by written documentation from the Commission).

(B) If the applicant owes a refund to the Commission, the applicant shall be on schedule with the terms of the repayment agreement or shall have satisfactorily discharged the financial obligation.

(C) The applicant shall have submitted an annual audit as required by the grant agreement or contract and either corrected all deficiencies or submitted and maintained compliance with a corrective action plan that the Commission has accepted.

(b) The Commission may establish additional application criteria in a request for proposal or other form of solicitation.

(c) Applicants shall continue to meet application criteria after funds are awarded or be subject to sanctions.

(d) Treatment applicants must be appropriately licensed and in good standing on the first effective service day proposed.

(e) The Commission may deny funding to an applicant if any person who has an ownership or controlling interest in the applicant organization, or who is an agent or managing employee of the applicant, has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or the Title XX block grant.

(f) The Commission may refuse to fund an applicant who cannot demonstrate that the location where services will be provided is in compliance with all applicable local and State zoning, building, health, fire, and safety standards.

The provisions of this §444.208 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.209 Funding Decisions

(a) Funding decisions are made in compliance with criteria established in the request for proposal.

(b) The Commission may conduct a key control systems review on an applicant's organization to verify that the organization has the capacity to deliver the services and achieve the outcomes specified in the RFP. The review also determines that adequate financial, managerial and operational systems are in place to safeguard the use of State and Federal funds.

(c) The Commission may negotiate with selected applicants to determine the terms of the contract.

(d) The Commission notifies successful and unsuccessful applicants in writing of the funding decision.

(e) Applicants shall not make public announcements about receipt of Commission funds until they have received written notification from the Commission.

(f) If the Commission does not receive a fundable application for a desired service, it may choose an alternative process to procure the service.

(g) The Commission may renew a competitive award if it determines that the best value will be achieved without further competition. Renewal of an award is not automatic. The Commission may renew an award when:

- (1) the contractor maintains required performance standards;
- (2) the Commission finds a continuing need for the services (relative to other services);
- (3) the contractor continues to meet application criteria; and
- (4) funds are available to continue the award.

The provisions of this §444.209 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.210 Alternative Solicitation

(a) The Commission may use the alternative solicitation process to:

- (1) purchase additional services if service needs and funds remain after a competitive request for proposal; and
- (2) distribute funds that become available and must be awarded during a contract period.

(b) Generally, available funds are regionally allocated according to the statewide funding methodology.

(c) The Commission shall identify the goals and services to be purchased.

(d) The Commission shall design selection criteria are designed to select applications that provide the best overall value to the State.

- (1) Criteria for selection include program quality, cost, and other factors relevant for determining best value.
- (2) Selection criteria are approved by the Commission's executive director.

(e) Notice of available funds for an alternative solicitation is posted on the Commission's web site and the State's electronic business daily. The posted solicitation on the web site includes:

- (1) the services to be purchased;
- (2) the geographic area to be served;
- (3) funding availability;
- (4) method(s) of payment;
- (5) contract period;
- (6) any limitations on eligibility to submit an application; and
- (7) requirements and deadline for submitting an application.

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§444.211 Other Funding Processes

(a) The Commission may solicit a proposal from only one source if it is not feasible to use competitive procedures or State law does not require competition.

(b) One of the following must apply:

- (1) A competitive process failed to elicit acceptable bids.
- (2) The agency awarding or appropriating the funds to the Commission either authorized the noncompetitive negotiation or approved the entity to receive funds.
- (3) Because of an emergency, it is necessary to proceed without formal advertising to avoid delay.
- (4) The material or service to be purchased is available from only one source.
- (5) State law does not require competition.

(c) If the available funds exceed \$25,000, a notice that services will be purchased is published on the Commission's web site and on the State's electronic business daily.

(d) After a noncompetitive award is made, the Commission reserves the right to use a competitive process in subsequent periods.

(e) The Commission may reobligate funds to another provider providing similar services in the same geographic area without a competitive solicitation should the Commission terminate a contract due to non-performance or deobligate funds as described in §144.419 of this chapter (relating to Deobligation/Reobligation). *The provisions of this §444.211 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842*

SUBCHAPTER C CONTRACT ORGANIZATION

§444.301 General Requirements

Contractors shall establish and maintain effective internal programmatic and financial controls to ensure:

- (1) Commission-funded programs are operated efficiently and effectively;
- (2) the contractor maintains compliance with other funding and regulatory agencies;
- (3) appropriate controls are in place to safeguard assets;
- (4) Commission funds are properly spent and accounted for;
- (5) clients/participants receive appropriate services; and
- (6) services are adequately documented.

The provisions of this §444.301 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.302 Organizational Structure

(a) All entities shall have a governing body that is legally responsible for the integrity of the fiscal and programmatic management of the organization.

(b) The governing body shall be a distinct business entity with legal authority to operate in the State of Texas.

(c) Staff members, including the chief executive officer, of a public or nonprofit entity shall not serve on their employer's governing board.

(d) The governing body shall meet at least quarterly and maintain minutes that include:

- (1) date, time, and place of the meeting;
- (2) names of members present and absent; and
- (3) summary of discussion and action taken.

(e) The governing body shall provide all members with information and training on the responsibilities and liabilities of the governing body and its individual members.

(f) The governing body shall ensure that all members are familiar with the contractor's target population(s) and sensitive to the needs of the different cultures represented.

(g) The governing body shall appoint a chief executive officer to manage the day-to-day operations of the organization and ensure that the organization has the programmatic, managerial, and financial capability to ensure proper planning, management, and delivery of funded services.

(h) The chief executive officer shall:

- (1) have documented education and/or experience in financial, administrative and personnel management, and other areas needed to manage the organization effectively;
 - (2) ensure compliance with applicable laws and rules;
 - (3) ensure that all staff are competent and trained;
 - (4) establish mechanisms to ensure quality of services;
- and
- (5) maintain adequate financial records according to generally accepted accounting principles.

(i) The contractor shall maintain a chart of the organization's structure and documentation of its staffing pattern. Documentation shall be sufficient to identify all staff positions, the individuals filling those positions, and current vacancies. Contractor shall review and update the information (if necessary) at least annually.

The provisions of this §444.302 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.303 Policies and Procedures

(a) Contractors shall maintain a current manual that includes all policies and procedures required by the Commission.

- (1) Policies shall be approved by the board, reviewed periodically, and revised as needed.
- (2) Procedures shall be approved by the chief executive officer, reviewed periodically, and revised as needed.

(3) The policy and procedures manual shall be current, consistent with current Commission rules, individualized to the program, well organized, and easily accessible to all staff at all times.

(4) Contractors shall require each employee to read the policies and procedures applicable to the position and maintain documentation signed by the employee that the policies and procedures have been read and understood.

(b) The policy and procedure manual must include the following policies and procedures, as applicable.

- (1) Contractors shall implement fiscal policies, and internal controls and procedures in the following areas:
 - (A) revenue/accounts receivable;
 - (B) billing/payment requests;
 - (C) cost allocation;

- (D) payroll;
- (E) expenditures/account payable;
- (F) procurement of goods and services;
- (G) match and program income and expenditures;
- (H) fixed assets inventory and records;
- (I) petty cash;
- (J) cellular phone use;
- (K) travel;
- (L) subcontractor fiscal compliance monitoring (if applicable); and
- (M) financial reporting.

(2) Contractors shall adopt and implement TCADA Workplace and Education Guidelines for HIV and Other Communicable Diseases in order to meet requirements as specified by the Americans with Disabilities Act, TEX. HEALTH & SAFETY CODE ANN. ch. 85 (Vernon 2001), and standard precautions for infection control as outlined by The Centers for Disease Control and Prevention.

(3) Contractors shall implement written policies and procedures to protect client/participant records and client/participant-identifying information from unauthorized disclosure in accordance with the Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. pt. 2 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(4) Contractors shall implement and enforce a written policy prohibiting discrimination against an individual or group based on race, religion, ethnicity, country of origin, age, disability (including mental illness), sexual orientation, or gender.

(5) Contractors shall implement a written policy and procedures for handling complaints.

(6) Contractors shall implement procedures for reviewing employee backgrounds.

(7) Contractors shall implement a policy on standards of conduct.

(8) Prevention and intervention programs shall implement a tobacco policy as required by TCADA.

(9) Contractors shall maintain documentation of formal agreements and contracts to address identified deficiencies in access to program services for people with disabilities.

(10) Within ten days of a policy or procedure change, contractors shall inform staff about any changes to the policy and procedure manual that are relevant to their job duties and document the notification. If training is needed, it shall be provided and documented within 60 days.

The provisions of this §444.303 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.304 Organizational and Personnel Changes

The contractor shall notify the Commission in writing within ten business days of:

- (1) changes in the contractor's legal name, address, telephone number, official e-mail address, or legal status; and
- (2) changes in the following personnel:
 - (A) certifying representative;
 - (B) board chair;

- (C) chief executive officer;
- (D) chief financial officer;
- (E) security administrator and backup for the Behavioral Health Integrated Provider System; and
- (F) project director/program director.

The provisions of this §444.304 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.305 Personnel Requirements and Documentation

- (a) Contractors shall keep complete, current documentation.
 - (1) All required documents shall be factual and accurate.
 - (2) Authentication shall include signature, credentials when applicable, and date. If the document relates to past activity, the date of the activity shall also be recorded.
 - (3) Documentation shall be permanent and legible.
 - (4) When it is necessary to correct a required document, the error shall be marked through with a single line, dated, and initialed by the writer.

(b) Contractors shall maintain current personnel documentation on each employee. Health-related information shall be stored separately with restricted access as appropriate under TEX. GOV'T CODE ANN. §552.102 (Vernon 2000). Training records may be stored separately from the main personnel file, but shall be easily accessible upon request. Required documentation includes, as applicable:

- (1) a copy of the current job description signed by the employee;
- (2) application or resume with documentation of required qualifications and verification of required credentials;
- (3) verification of work experience;
- (4) annual performance evaluations;
- (5) personnel data that includes date hired, rate of pay, and documentation of all pay increases and bonuses;
- (6) documentation of appropriate screening and/or background checks;
- (7) signed documentation of initial and other required training; and
- (8) records of any disciplinary actions.

(c) Contractors shall have an adequate number of qualified staff to comply with Commission rules, provide the services described in the program description, and protect the health, safety, and welfare of clients/participants.

(d) Every program shall have an employee designated to serve as director. The individual must have appropriate education and training and at least two years of experience providing related services.

(1) The director of a prevention program must have at least two years of experience in substance abuse prevention, and the director of an intervention program must have at least two years experience in intervention. At least one year of experience must be specific to the program's target population.

(2) Prevention and intervention programs shall employ program directors designated as Certified Prevention Specialist (CPS), or program directors who have completed 40 hours of prevention specialist training as outlined below. Program directors for HIV early intervention (HEI), HIV outreach services (HIV) and

outreach screening, assessment and referral (OSAR) programs are exempt from the CPS and 40 hour training requirement. The 40 hours of training must include:

- (A) history of prevention as a discipline;
- (B) facts about drugs and drug terminology;
- (C) prevention theory including risk/protective factors and resiliency;
- (D) currently recognized prevention strategies and principles;
- (E) role of media and environmental prevention approaches;
- (F) promising, effective and/or model programs as designated by CSAP;
- (G) cultural content and ethics of prevention; and
- (H) assessment and evaluation as prevention tools.

(e) The program shall hire applicants who meet the minimum qualifications listed in the job description.

The provisions of this §444.305 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.306 Commission Logo and Slogan

The contractor may not use the Commission's logo and slogan in publications, electronic media, or video material unless the Commission has given written permission.

The provisions of this §444.306 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

SUBCHAPTER D CONTRACT ADMINISTRATION

§444.401 General Contract Provisions

(a) A contract is not fully executed until it has been signed by the Commission and the contractor.

(b) No payment of funds or working capital advance will be made until the contract is fully executed.

(c) Changes in State or Federal laws and regulations may affect contract provisions. Any modifications resulting from such changes are automatically made part of the contract and go into effect on the date set by the law or regulation.

(d) The contractor shall have insurance or other provisions approved in writing by the Commission to ensure that assets purchased with Commission funds will be replaced. Insurance coverage shall include, but not necessarily be limited to:

- (1) property insurance covering loss, destruction, damage or theft;
- (2) liability insurance on the contractor's property and vehicles;
- (3) workers' compensation insurance for the contractor's employees that is allocated as a general administrative expense to all organizational activities; and

(4) general liability insurance coverage for clients or participants who attend activities or counseling on the contractor's premises.

(5) Commission-funded insurance coverage may include term life insurance on the lives of trustees, officers or other employees holding positions of similar responsibility, only to the extent that

the insurance represents additional compensation. The costs of insurance when the organization is named as beneficiary are unallowable. The amount of such insurance shall be limited to the amount of the individual's annual salary.

(e) The contractor shall carry a fidelity bond or insurance coverage. The fidelity bond or insurance must provide for indemnification of losses due to fraudulent or dishonest acts committed by any of the contractor's employees or volunteers who have access to funds, either individually or in concert with others.

(1) If the contractor's contract with the Commission is \$100,000 or less, coverage shall be equal to the contract amount.

(2) If the contractor's contract is over \$100,000, coverage shall be equal to \$100,000 or 35% of the contract amount, whichever is greater, but in no event shall required coverage exceed \$500,000.

(f) Contractors shall maintain all records relating to the contract for at least three years from the date the independent financial audit is accepted (when required) or would have been due (when not required) as stated in Office of Management and Budget (OMB) Circular A-133, the requirements of the Single Audit Act Amendments of 1996, and other governance guiding the program. If any litigation, audit, or other action is in process at the end of three years, the records must be kept until the action is resolved. If a contractor closes business operations, it shall ensure that records relating to the contract are securely stored and accessible for at least three years. The contractor shall provide the Commission with the name and address of the party responsible for storage of records.

The provisions of this §444.401 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.402 Application of Federal and State Regulations

(a) All contractors shall comply with the provisions of the Uniform Grant Management Standards (UGMS). Expenditures of Commission funds, including required cash match, shall be reasonable, necessary, allocable, and allowable, and must receive required prior approval as stated in UGMS. All contractors shall also comply with Federal cost principles and administrative requirements as appropriate for the organization. When there is a conflict between UGMS and the Federal regulations, the most restrictive shall apply. The Federal cost principles and administrative requirements are applicable as follows:

(1) State and local governments or Indian tribal governments shall comply with cost principles found in the OMB Circular A-87 and administrative requirements found in the OMB Circular A-102.

(2) Not-for-profit contractors shall comply with cost principles found in the OMB Circular A-122 and administrative requirements found in the OMB Circular A-110 (with changes incorporated as 45 C.F.R. §74).

(3) Educational organizations shall comply with cost principles found in OMB Circular A-21 and administrative requirements found in OMB Circular A-110; (with changes incorporated as 45 C.F.R. §74).

(4) Commercial organizations shall comply with cost principles found in 48 C.F.R. §31, and administrative requirements found in OMB Circular A-110 (with changes incorporated as 45 C.F.R. §74).

(5) Hospitals shall comply with cost principles found in 45 C.F.R. §74, and administrative requirements found in OMB Circular A-110.

(b) All references in the circulars to "Federal" or "Federally" shall be expanded to read "Federal or State" or "Federally or State", as applicable. References to "recipient" shall be expanded to read "recipient, contractor, subcontractor, subrecipient, or provider."

(c) The contractor shall also comply with requirements and restrictions found in the Substance Abuse Prevention and Treatment Federal Block Grant, found at 42 U.S.C. §300x.

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§444.403 Matching Funds

In accordance with TEX. HEALTH & SAFETY CODE ANN. §461.014 (Vernon 2001), all contractors shall contribute at least 5.0% of the total Commission-funded contract expenditures in matching funds or in-kind contributions in compliance with applicable OMB circulars from sources eligible to be used for matching purposes. If this requirement is satisfied with cash, then the costs incurred must be allowable and borne with eligible funds. Cash and in-kind match may not count towards satisfying the match requirement if they have or will be used towards satisfying a match requirement for another Federal or State contract.

The provisions of this §444.403 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.404 Program Income

(a) Contractors shall separately record and report all program income directly generated through the portion of a program or activity funded by the Commission.

(b) The program may charge fees as noted on Federal Poverty Income Level Guidelines--TCADA Sliding Fee Scale for Commission-Funded Services or Activities Provided:

(1) an otherwise eligible applicant is not refused Commission-funded services for inability to pay; and

(2) with prior approval, the resulting income can be used as listed below according to applicable regulations:

(A) as matching funds to offset allowable costs of the funded program;

(B) to expand or increase funded program services/activities or further expand program objectives; or

(C) as a deduction to the program/contract amount if not expended or used as cash match.

(3) Contractor shall maintain documentation to support how the resulting income is expended.

The provisions of this §444.404 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.405 Indirect Cost

(a) If a contractor does not elect to direct cost all administrative expenses, a contractor may request approval to charge administrative expenses as indirect costs. Two methods are available for charging shared administrative costs. The contractor may:

(1) submit documentation of a current or provisional indirect cost rate approved by the contractor's cognizant agency; or

(2) use an indirect cost rate not to exceed 10% as provided in the UGMS. If requesting this option, the contractor must provide supporting documentation that shows the direct salary and

wage costs of providing the service (excluding overtime, shift premiums, and fringe benefits), as well as a list of indirect cost items that support the service.

(b) All contractors receiving funds from other sources must maintain a cost allocation plan showing how administrative costs are distributed among funding sources.

(c) The Commission reserves the right to require administrative expenses to be charged as direct costs.

(d) The contractor shall obtain approval to use the indirect rate for each contract.

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§444.406 Expenditures Requiring Prior Approval

For contractors on a cost reimbursement payment mechanism, prior written approval is required for certain costs charged to the Commission contract. Costs that are allowable only with prior written approval from the Commission include:

- (1) equipment;
- (2) minor remodeling;
- (3) contractual services;
- (4) any transfer among program budget line items for direct costs when cumulative transfers exceed or are expected to exceed 10% of the total approved program budget; and
- (5) transfers that are requested between programs or between intensities of treatment services.

The provisions of this §444.406 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.407 Equipment and Supplies

(a) Equipment includes all tangible personal property that costs \$5,000 or more per unit and has a useful life of more than one year. A set of components designed to function together shall be treated as a single unit.

(b) Supplies include all materials and other expendable property needed to carry out a contract with a unit cost of less than \$5,000.

(c) Controlled items have a unit cost of \$500 - \$4,999 and/or a high risk of theft. Examples include televisions, fax machines, video recorder/players, printers, software, and mobile telephones.

(d) The contractor shall conduct an annual physical inventory of all equipment and controlled items purchased with Commission funds. The physical inventory may be conducted at a point certain during the fiscal year, but no later than 60 days after the close of the fiscal year.

(1) The inventory shall conform to standards found in the UGMS or the applicable OMB circular.

(2) Inventory records shall be current, maintained at the program site, and reported as part of the annual contract closeout.

(e) Contractor shall request disposition instructions from the Commission before disposing of inventoried items purchased with Commission funds at any time during or after the contract term. Additionally, contractors shall not dispose of property purchased with Commission funds without prior written approval from the Commission.

The provisions of this §444.407 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004,

as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.408 Minor Remodeling

(a) Minor remodeling is work that is required to change the interior arrangements or other physical characteristics of an existing building. It does not include work that substantially increases the value of the building nor does it include replacement or repair and maintenance of existing systems or structures.

(b) Contractor shall have written approval from the Commission before incurring any minor remodeling projects.

(c) Any remodeling project must meet the following conditions:

(1) The remodeling shall be essential to the Commission-funded program;

(2) The remodeled space shall be occupied or used by the program; and

(3) The building shall be owned or leased by the contractor; if the facility is leased, there shall be at least three years remaining in the lease period.

(d) If the program is funded only in part by the Commission, only a pro-rata share of the total minor remodeling costs may be charged to the Commission.

(e) Costs for minor remodeling shall not exceed an aggregate of \$25,000 per contractor per project.

(f) A written request for remodeling must include a narrative description of the proposed functional utilization of the space and the final cost estimate. The following documents must accompany the request, as applicable:

(1) a single line drawing of the existing space and proposed alterations;

(2) equipment requirements prepared by the persons who will use and be responsible for the working space;

(3) final working drawings and specifications;

(4) list of fixed equipment proposed for the facility; and

(5) the design analysis report describing the heating, ventilation, air conditioning, plumbing, and electrical systems.

The provisions of this §444.408 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.409 Subcontracting

(a) The provisions in this section apply when a contractor subcontracts, assigns, or transfers any activity central to the purposes of the contract to a third party.

(1) The subcontractor shall be a corporation, partnership, sole proprietor, or other entity with legal authority to operate in the State of Texas.

(2) The subcontractor shall be in good standing with all applicable legal, regulatory and funding agencies. If the subcontractor has been funded by the Commission, the organization shall not be suspended or delinquent on a repayment agreement, and shall not have had a contract terminated by the Commission for cause within the past three years. The Contractor shall require any potential subcontractor to disclose all legal, regulatory, or contractual actions initiated against it in the past three years, including pending actions and/or investigations.

(b) The contractor shall, in writing, require any subcontractor to comply with applicable laws and regulations and with the pro-

visions and stipulations of the contractor's contract with the Commission.

(c) The relationship between the contractor and the subcontractor shall be formalized in a written agreement that is signed by the governing body or legally responsible party of both the contractor and the subcontractor.

(d) The contractor shall retain sufficient rights and controls to fulfill its contract responsibilities to the Commission. Subcontracting does not relieve the funded contractor of any responsibility to the Commission under the contract.

(e) The contractor shall monitor subcontractor compliance with provisions of the contract and applicable laws and regulations, and shall take appropriate steps to ensure corrective action when issues of non-compliance are identified. The monitoring activity must be documented and will be subject to review by the Commission.

(f) The contractor is responsible for paying subcontractors. When a contract ends, the contractor and each subcontractor shall settle all claims promptly, including those from employees, vendors, and other subcontractors.

(g) Subcontractors must also comply with all applicable State and Federal laws and regulations and Commission requirements contained in the Commission's rules. These specifically include the audit requirements of Office of Management and Budget (OMB) Circular A-133 if applicable, and all other Federal and State regulations required in §144.402 of this title (relating to Application of Federal and State Regulations).

(h) Subcontractors are subject to Commission oversight. The contractor shall, in writing, require the subcontractor to permit access as described in §144.501 of this chapter (relating to Commission Oversight).

The provisions of this §444.409 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.410 Assignments and Transfers

(a) Contractor shall not assign or pay another entity to provide services without prior written approval by the Commission.

(b) Contractor shall not transfer its interest in the contract without the written consent of the Commission.

The provisions of this §444.410 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.411 Procurement of Goods and Services

(a) The contractor may use small purchase procurement procedures to obtain services, supplies, or other property if the total cost of all purchases does not exceed \$25,000 for the contract period. These rules do not apply to obtaining the services of a professional as defined in TEX. GOV'T CODE ANN. ch. 2254 (Vernon 2000).

(1) For any purchase under \$5,000, price or rate quotations are not required.

(2) The contractor shall obtain three verbal or written price or rate quotations for any purchase between \$5,000 and \$10,000. Telephone and other verbal quotations must be documented and available for inspection.

(3) The contractor shall obtain three written price or rate quotations for any purchase of over \$10,000. Facsimiles or printed copies of electronic transmissions are acceptable.

(b) The contractor shall select the vendor providing the best value as specified in 1 TAC §391.121 (2003) for the goods or services desired and document the rationale for selection.

(c) A single purchase may include more than one item. Large purchases shall not be divided into small lots in order to avoid bid requirements, especially when bought from the same vendor in the same fiscal year.

(d) If purchases for the contract period are expected to exceed \$25,000, the contractor shall comply with requirements found in UGMS or the applicable OMB circular.

The provisions of this §444.411 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.412 Travel

(a) Expenses for transportation, lodging, meals, and related items are allowable when they are incurred by an employee or volunteer on official business that is directly attributable to the contract or required for administration of the contractor.

(b) Costs for lodging, meals, and related items may not exceed the State of Texas per diem rates and costs for mileage may not exceed the State of Texas rate for mileage reimbursement. If the contractor's policies and procedures establish a lower per diem rate, the lower rate shall apply.

(c) When applicable, the contractor may use the State's schedule of per diem rates for out-of-state travel. Federal travel regulations contain maximum meal and lodging reimbursement rates for selected municipalities and counties in each state. The Comptroller of Public Accounts' maximum reimbursement rates for those municipalities and counties are the same as the rates contained in the Federal travel regulations.

(d) Gratuities, alcoholic beverages and tobacco products are not allowable costs.

The provisions of this §444.412 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.413 Financial Eligibility and Third Party Payment

(a) The rules in this section apply to all programs subject to financial eligibility requirements, including all treatment programs. If applicable to a prevention or intervention program, the requirement for financial eligibility determination shall be stipulated in the contract.

(b) The Commission is the payor of last resort for substance abuse services. A contractor shall not bill the Commission for services provided to a client if:

(1) the individual does not meet the Commission's eligibility criteria; or

(2) the individual has access to another public or private funding source that pays for substance abuse services addressing the individual's diagnosis or condition.

(c) The program shall complete and document a financial assessment of each applicant before billing the Commission for treatment services provided to the client, as follows:

(1) The program shall use financial eligibility criteria, forms, and assessment procedures established by the Commission.

(2) A person whose adjusted income is at or below 200% of the Federal poverty guidelines is eligible for free services.

(3) A person whose adjusted income is above 200% of the Federal poverty guidelines shall be charged for services according to the Commission's sliding fee scale.

(d) For adolescents, ability to pay shall be determined by parental or family income unless:

(1) the adolescent applies for treatment without parental knowledge; and

(2) the adolescent refuses to consent to parental notification.

(e) If an adolescent program determines that both conditions in subsection (d) are met, the adolescent's income may be used to determine financial eligibility.

(f) If the client is physically unable to respond to the request for financial and other eligibility information due to intoxication or other behavioral health issue, the financial assessment may be delayed, but it must be completed within three days of admission.

(g) The program shall provide appropriate referrals for all persons who are found to be ineligible for financial or clinical reasons. Documentation shall include:

- (1) date(s) of application and denial;
- (2) identifying information;
- (3) the reason the person was denied admission; and
- (4) organizations to which the client was referred.

(h) Any contractor offering services eligible for Medicaid reimbursement shall take all necessary steps to obtain a Medicaid provider number and become an approved Medicaid provider. The process must be initiated no later than 30 days after the beginning date of a contract with the Commission.

(1) All programs providing outpatient treatment services to children and adolescents must contact the current designated contractor for Medicaid to initiate enrollment as a Chemical Dependency Treatment Facility (CDTF) in the Texas Medicaid Program.

(2) Any contractor delivering services in the STAR, STAR+, and/or NorthSTAR service areas must enroll with those program health plans to be reimbursed for services delivered to those clients.

(3) The contractor must screen all clients for Medicaid eligibility. If a client appears eligible but has not yet applied, the contractor shall direct the client to apply for Medicaid benefits and provide assistance as needed to facilitate the enrollment process.

(4) The contractor must bill Medicaid for all covered services delivered to eligible clients.

(i) Contractors serving individuals under 18 years of age shall take all necessary steps to become an approved Children's Health Insurance Program (CHIP) provider by contacting the contracted Health Maintenance Organization (HMO), Behavioral Health Organization (BHO), or Exclusive Provider Organization (EPO) in the region. The process must be initiated no later than 30 days after the beginning date of a contract with the Commission.

(1) The contractor must screen all clients under the age of 18 for CHIP eligibility. If a client appears eligible but has not yet applied, the contractor shall direct the client's consentor to apply for CHIP benefits and provide assistance as needed to facilitate the enrollment process.

(2) The contractor must bill CHIP for all covered services delivered to eligible clients.

(j) The Contractor shall not bill the Commission for any part of any unit of service that has been billed to another entity or that is eligible for reimbursement by another entity. If the third party payor denies payment and all appeals have been exhausted, the contractor may bill the Commission for that unit of service.

(k) The contractor shall make a reasonable effort to collect fees generated from clients paying according to a sliding fee scale, but the contractor may waive collection if the administrative cost of

collection will exceed the fee to be collected. The contractor shall not bill the Commission for any uncollected client fees.

The provisions of this §444.413 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.414 Payment Requirements

To be eligible for payments, the contractor must comply with provisions of the contract, rules, policies, and procedures of the Commission, and other applicable State and Federal laws and regulations.

The provisions of this §444.414 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.415 Cost Reimbursement for Prevention/Intervention Programs

(a) All contractors must submit requests for payment promptly and regularly.

(1) Payment requests must be submitted monthly.

(2) Failure to submit payment requests in a timely manner may result in nonpayment.

(b) Contractors shall submit all bills and payment requests through the Behavioral Health Integrated Provider System (BHIPS), unless otherwise instructed. Payment requests shall be complete, accurate, and certified by the contractor's authorized representative (specified in the contract).

(c) Contractors shall maintain documentation necessary to support all payment requests.

(d) Contractors paid through cost reimbursement may request a working capital advance.

(1) A working capital advance may be granted if the contractor submits documentation justifying the need for working capital. Working capital advances shall be granted on an exception basis only.

(2) A contractor receiving a working capital advance shall minimize the time between disbursement of funds by the Commission and expenditure of funds by the program.

(3) A working capital advance for a new fiscal year will not be granted until any working capital advance or surplus cash from the prior fiscal year is fully liquidated.

The provisions of this §444.415 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.416 Billing for Treatment Services

(a) Treatment programs funded through the unit rate payment mechanism shall use the client billing forms to request reimbursement. A billing form must be submitted for each client served in the program who is supported with Commission funds.

(b) Treatment programs shall not bill the Commission for services provided:

(1) at an unlicensed site if the site is required to have a license; or

(2) by a staff person who does not meet the Commission's minimum requirements.

(c) Programs may bill for only one intensity of service and service type (outpatient or residential) per client per day, except that contractor may provide and bill the Commission for pharmacotherapy or co-occurring psychiatric and substance use disorder services

for a client at the same time the contractor provides and bills the Commission for outpatient or residential services for the same client.

(d) Programs shall not bill the Commission for outpatient services in an amount that is greater than the residential/day treatment rate for the equivalent level of services.

(e) A residential program may hold an empty bed and bill for a client who is on a planned, approved absence for up to two consecutive days. The frequency of approved absences shall be reasonable and appropriate and shall not exceed four days in a 30-day period, except as provided below.

(1) Contractors shall include planned absences for delivery in treatment plans for each pregnant female, and shall ensure that a bed is available for the female upon her return.

(2) Absences for medical treatment (including delivery), court appearances, or other emergencies may exceed 48 hours, but Commission approval is required if the absence exceeds 96 hours.

(f) Contractors shall maintain documentation necessary to support all payment requests.

The provisions of this §444.416 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.417 BHIPS Requirements

(a) Contractors shall ensure that they have appropriate Internet access and an adequate number of computers of sufficient capabilities to support the use of BHIPS for clinical, billing and reporting purposes.

(b) Contractors shall designate a security administrator and a back-up security administrator. The security administrator is required to implement and maintain a system for management of user accounts/user roles to ensure that all BHIPS user accounts are current.

(c) Contractors shall notify the Commission immediately if a security violation is detected or if there is any reason to suspect that the security or integrity of BHIPS data has been or may be compromised in any way.

(d) Contractors shall guarantee that adequate internal controls, security and oversight are established for the approval and electronic transfer of information regarding payments and reporting requirements. Contractor shall guarantee that the electronic payment request and reports that are transmitted shall contain true, accurate, and complete information.

(e) Contractors shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The provisions of this §444.417 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.418 Reporting

(a) The contractor shall submit all performance reports, financial reports and requests for payment as required by Commission rules and the contract through BHIPS. Reports shall be submitted in the specified form, manner, and timeframe. Unless otherwise specified, reports are due 20 days after the end of the reporting period.

(b) Treatment programs shall report available capacity and waiting list information Monday through Friday through BHIPS and comply with procedures specified by the Commission. A program that treats individuals for intravenous substance abuse shall notify the Commission through BHIPS when the program's capacity for treating intravenous substance abusers reaches 90%.

(c) All treatment programs shall submit Client Data System (CDS) forms on BHIPS for all clients receiving Commission-funded substance abuse treatment services. Programs shall also correct all errors appearing on the CDS Error Report and submit forms or corrections as needed for records appearing on the "Clients Requiring Transfer Admission Reports." The contractor shall refer to the BHIPS Help File, as needed, for detailed information concerning the above forms and reports.

(d) Contractors shall reconcile internal accounting records with documentation submitted to the Commission and maintain supporting documentation on site.

(e) Adjustments to the final Financial Status Report (FSR) will not be made more than 90 days after the end of the contract period unless the contractor's independent audit report demonstrates that the FSR is incorrect. Prior permission must be obtained in writing to adjust FSRs after the 90-day period.

The provisions of this §444.418 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.419 Deobligation/Reobligation

The Commission may exercise its authority to deobligate (reduce) or reobligate (increase) contracted program funding during the contract term. Changes in funding will be made in accordance with a fund utilization policy that is based on budgeted versus actual expenditure levels and performance rates as indicated in the contract and documented by the contractor's expenditure and performance reports.

The provisions of this §444.419 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.420 Contract Closeout

(a) Submission of Documents. Contractors shall submit all financial, performance, and other closeout reports required under the contract within 60 days after the contract end date. Treatment contractors shall submit an annual cost report in a format designated by the Commission as part of their closeout packet. The Commission is not liable for any claims that are not resolved with the Commission within 90 days after the contract end date.

(b) Equipment. Contractors shall submit an inventory of property and controlled items purchased with Commission funds at closeout and request disposition instructions for property that is no longer needed.

(c) Payment of Refunds. Any funds paid to the contractor in excess of the amount the contractor is finally determined to be entitled under the terms of the contract constitute a debt to the Commission and will result in a refund. The contractor shall pay any refundable amount within the time period established by the Commission.

(d) Disallowances and Adjustments. The closeout of the contract does not affect:

(1) The Commission's right to disallow costs and recover funds on the basis of a later audit or other review.

(2) The contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

The provisions of this §444.420 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

SUBCHAPTER E CONTRACT OVERSIGHT

§444.501 *Commission Oversight*

(a) All contractors, regardless of the level of funding, are subject to periodic reviews by the Commission for adherence with applicable Federal and State statutes and regulations, Commission rules and contract requirements. These include desk reviews, on-site reviews or in response to a complaint.

(b) The contractor shall allow Commission staff access to the contractor's premises and records and to interview members of the governing body, staff, participants, and clients.

(c) The contractor shall allow Commission staff to examine all property and examine or copy all books, recordings, client records, and documents related to or potentially related to the contract or a Commission requirement.

The provisions of this §444.501 adopted to be effective September 1, 2004, 29 TexReg 5642; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.502 *On-Site Reviews*

(a) After an on-site review, the contractor will be notified in writing of any noncompliance with Federal and State statutes and regulations, Commission rules and contract requirements identified by the Commission in a draft report.

(b) The contractor shall respond to the draft report and the deficiencies and if necessary, submit documents and evidence of corrections to the Commission within 14 calendar days of the postmark date of the draft report.

(c) The Commission shall review the specific documents and evidence of corrections, including any modifications agreed upon prior to acceptance. The contractor's response shall become a part of the final report.

(d) The contractor shall correct deficiencies identified in the final report within the specified time frame.

The provisions of this §444.502 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.503 *Independent Audit Report*

(a) Contractors that expend a total amount of Federal awards (from the Commission and other funding sources) of at least \$500,000 during their fiscal year must have a single or program specific audit in accordance with Office of Management and Budget Circular A-133, the requirements of the Single Audit Act Amendments of 1996, and other governance guiding the program.

(1) If the funds are expended under more than one Federal program, the contractor shall have a single audit.

(2) If the funds are expended under only one Federal program and the contractor is not subject to laws, regulations, or Federal contracts that require a financial statement audit, the contractor may elect to have a program-specific audit.

(b) When a contractor expends both State and Federal funds and is required to submit a single audit report, the schedule of Federal and State expenditures may be combined in one schedule in the report. However, the source and total amount of funds expended (Federal vs. State) must be clearly stated. Contractors that expend less than \$500,000 in Federal or State funds from all sources during their fiscal year shall submit a signed audit arrangements statement to the Commission after their fiscal year end certifying that the contractor is not required to submit a single or program-specific audit report.

(c) The Commission reserves the right to require an audit for a program regardless of the amount of expenditures.

The provisions of this §444.503 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.504 *Auditor Qualifications*

(a) The audit shall be conducted by an independent certified public accountant (CPA).

(b) The selected auditor must meet the requirements of the Government Auditing Standards (GAS) and be licensed in the state in which the audit is performed at the time the audit is performed.

(c) Contractors who use outside CPA firms to perform book-keeping or accounting services shall not use the same CPA firm for audit services.

The provisions of this §444.504 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.505 *Independent Audit Report Requirements*

(a) The audit report shall include the requirements found in:

- (1) OMB Circular A-133 Compliance Supplement;
- (2) Government Auditing Standards (GAS);
- (3) UGMS; and
- (4) the Commission's contract(s), including any stipulations and amendments.

(b) In addition, the audit shall meet applicable requirements in §144.402 of this chapter (relating to Application of Federal and State Regulations).

The provisions of this §444.505 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.506 *Independent Audit Report Submission*

(a) The contractor shall submit three copies of all required audit documentation to the Commission, including:

- (1) the audit report;
- (2) any separately issued management letters;
- (3) management responses that include a corrective action plan for each deficiency noted in the independent financial audit report and management letter.

(A) Management responses shall express agreement or disagreement with the noted deficiencies. Disagreement shall include additional support, evidence, or justification of the contractor's position.

(B) The corrective action plan shall include:

- (i) the title(s) of the person(s) responsible for the corrective action;
- (ii) the corrective action planned; and
- (iii) the anticipated completion date.

(C) If the contractor believes corrective action is not required for a noted deficiency, the response shall include an explanation and specific reasons.

(D) The Commission shall review the corrective action plan.

(4) documentation of board approval or disapproval of the audit report.

(b) Audits shall be completed and submitted no later than nine months after the contractor's fiscal year end. Documentation of

board approval may be submitted separately if the board is unable to review the audit report before the due date, but this documentation must be provided before the Commission's final acceptance of the audit.

The provisions of this §444.506 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842

§444.507 Audit Report Desk Reviews

(a) After reviewing the audit, the Commission will send the contractor a resolution letter requesting a response to any administrative findings or deficiencies.

(1) The contractor shall respond to the Commission within 14 calendar days of the postmark date.

(2) If the response is not satisfactory, an additional 14 days will be given to provide a satisfactory response. If the issue is not resolved within that time period, sanctions may be invoked.

(b) When the review process indicates that no further action is needed, the Commission will mail an acceptance letter to the contractor.

(c) If excess revenue is identified during the desk review process, cost reimbursement contractors must refund the money within the specified time frame.

The provisions of this §444.507 adopted to be effective February 1, 2004, 29 TexReg 473; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842