



**COUNTY OF LOS ANGELES  
COMMUNITY AND SENIOR SERVICES**

**DIRECTIVE**

**Number: CD- 15 - 18**

**SUBJECT: Sanctions and Remedies**

**Date: June 8, 2016**

**Effective Date: July 1, 2016**

**TO: ALL CSS CONTRACTORS**

**PURPOSE:**

In order to ensure that County of Los Angeles Community and Senior Services (CSS) maintains compliance with all Federal, State, and local grant administration deadlines and report requirements, CSS is issuing this directive to reiterate the due dates for Contractors to submit contractually required documents, including, but not limited to, data entry reporting, invoicing, and annual financial close out documentation.

This directive transmits the policy and procedures for actions that the CSS may take as a result of a Contractor's failure to comply with the terms of and conditions of its subaward. This Directive supersedes **Directive CD-13-01, "REVISED Protocols for Addressing Areas of Noncompliance,"** dated October 15, 2013.

This Directive informs all Contractors of the sanctions that will be applied based upon non-compliance with the terms and conditions of their respective contracts. This Directive will also provide Contractors with the revised process that CSS will follow when a Subrecipient is non-compliant, including the application of sanctions when attempts to resolve areas of non-compliance have been unsuccessful.

**APPLICATION:**

This directive applies to all subrecipients and Contractors funded by CSS.

**REFERENCES:**

- 2 CFR Chapter I and Chapter II, Parts 200, 215, 220, 225, and 230 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule

## **BACKGROUND:**

On December 26, 2013, the Office of Management and Budget revised the Uniform Administrative Requirements for Federal grants, combining those requirements with those of the audit requirements and cost principles. These regulations are codified at 2 CFR Chapter I and Chapter II, Parts 200, 215, 220, 225, and 230, became effective December 26, 2014, and are referred to as the Uniform Guidance.

## **DEFINITIONS:**

Contractor is an entity which has a contractual obligation with CSS to render services in exchange for funding, as defined in 2 CFR 200.93. The Contractor is also known as a subrecipient, and/or agency.

Corrective action means action taken by the auditee that:

1. Corrects identified deficiencies;
2. Produces recommended improvements; or
3. Demonstrates that audit findings are either invalid or do not warrant auditee action. (2 CFR 200.26)

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award. (2 CFR 200.31). In addition, disallowed costs may occur with state and/or local funds that are deemed disallowed.

Final determination is the awarding agency's decision to allow or disallow questioned costs and resolve any nonmonetary findings.

Final debt is the amount owed based on the awarding agency's final determination if an appeal is not filed, or the decision issued in response to an appeal. Included in final debts are funds due from, but not limited to, incidents of fraud, malfeasance, misapplication of funds or other serious violations or illegal acts.

High Risk Entity is an entity that:

1. Has a history of unsatisfactory performance;
2. Is not financially stable;
3. Has prior reviews disclosing a management system that did not meet the cash management standard as set forth in related federal guidelines;
4. Has not conformed to terms and conditions of previous awards;
5. Cannot demonstrate that it has:
  - a. A defined method to account for and report program income where appropriate;

- b. A working understanding of the legislation, implementing regulations, circulars; and State and local policies impacting the award;
  - c. Sufficient staffing to ensure separation of duties;
  - d. Conducted an audit of its activities during the past year; and/or
  - e. Resolved administrative findings resulting from monitoring, audit, or other reviews.
6. Experienced a change in its key personnel or practices;
7. Has a history of disallowed costs.

An entity that does not have prior experience managing federal grants may also be considered high risk.

Improper payment means:

1. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements;
2. Improper payments, including any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper. (2 CFR 200.53)

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. (2 CFR 200.74)

Stand-in costs are substituted costs, disbursed or accounted for from non-Federal funds, for unallowable subaward costs, for which there is a proven benefit, and costs are for the same period and program and have been audited.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal, state, and/or local award received by the pass-through entity. It does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (2 CFR 200.92)

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal, state, and/or local program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal, state, and/or local awards directly from a Federal, state, or local awarding agency. (2 CFR 200.93)

Suspension means an action by the awarding agency that temporarily withdraws funding under a subaward or suspends contract services, pending corrective action by the subrecipient or pending a decision to terminate the subaward by the awarding agency.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of the performance period. (2 CFR 200.95)

## **STATUTORY DEADLINES**

### Monthly Invoicing Requirements

Pursuant to the Invoice and Payments provision of your Contract (typically Section 5.10.4 of the Contract's Standard Terms and Conditions):

Contractor shall submit monthly invoices to County by the 10<sup>th</sup> calendar day of the month following the month of Service (e.g., Contractor shall submit an invoice for Services provided in October by November 10<sup>th</sup> for reimbursement). Contractor shall also submit the final, year-end invoice to the County no later than the 7<sup>th</sup> calendar day of the month following the month in which Services were provided. In the event that the 7<sup>th</sup> calendar day falls on a non-business day (Saturday, Sunday or Los Angeles County holiday), Contractor shall submit the invoice by the following business day. County reserves the right to modify the due date(s) for the submission of invoices as needed in order to meet regulatory deadlines.

### Year-End and Final Invoices Requirements

The invoicing requirements are impacted by the County and State's year-end practices and deadlines. The County temporarily suspends payment processing during the middle of July. The Contractor must submit accurate and timely invoices, especially if immediate cash on hand is necessary to run its operations during the middle of July. As such, Contractors are to adhere to variances as indicated below:

Invoices for June and any other prior service must be received by July 7<sup>th</sup> or on the closest, earlier business day if the 7<sup>th</sup> falls on a weekend or holiday. Invoices that are received after this deadline, or contain errors, shall be processed for payment on the last week of July, when the County resumes payment activity.

### Data Reporting Requirements

Pursuant to the Reports, Documentation, and Direct Data Entry provision of your Contract:

Most of the reporting requirements are outlined in the Statement of Work or standard terms and conditions and sometimes vary depending on the program. In addition, there are instances in which additional information or corrections from service providers are

requested in order to submit more accurate information. Please refer to your contract for more information regarding data reporting requirements. In order to be in compliance with data input requirements the following requirements must be met:

1. For AAA:
  - a. All AAA services must be entered into the system by the 10<sup>th</sup> calendar day of the month following the service delivery month. If the 10<sup>th</sup> of the month falls on a weekend, data input must be completed on the next business day.
  - b. If applicable or requested by the AAA, all AAA manual reports must be submitted to CSS by the 20<sup>th</sup> of the month following the report period.
  - c. If applicable or requested by the AAA, all reports that are submitted by the subrecipient directly to the state are to be submitted by the 20<sup>th</sup> of the month following the report period unless otherwise stated by the funding source. CSS is to be copied on the transmittal which shall include the electronic copies of the reports.
  
2. For WIOA:
  - a. WIOA Service subrecipients are to enter all WIOA participant information into the CalJOBS system on a daily basis. The CalJOBS system allows backdating up to 30 days, but agencies should not backdate more than 3 business days. Policy on data input into CalJOBS is outlined in Directive number WIA-RS-15-01 dated 12-09-2014.
  - b. All WIOA manual reports must be submitted by the 5<sup>th</sup> of the month following the report period.
  
3. For all Programs:
  - a. Subrecipients for all programs are to correct all the data input errors within 1 business day after the receipt of the listing.
  - b. All services are to be recorded in accordance with the requirements outlined in the Statement of Work for the respective program, unless stated otherwise in a subsequent program memo or directive.
  - c. CSS subrecipients must comply with all the requirements outlined in program memos or directives that are released after the execution of a contract.

### Cost Allocation Plan Submission Requirements

Pursuant to the Cost Allocation Plan for Cost Reimbursement Activities provision of the Contract (typically Section 6.3 of the Contract's Statement of Work):

- 6.3.2.2 Contractor must submit the Cost Allocation Plan to County's Contract Manager within sixty (60) days of execution of the Contract; and

6.3.2.3 Annually, Contractor must also submit a new Cost Allocation Plan to County's Contract Manager for review and approval within sixty (60) days of the start of each Fiscal Year.

Closeout Reporting Requirements

Pursuant to the Closeout Reports provision of the Contract (typically Section 6.4 of the Contract's Statement of Work):

At the end of the Fiscal Year, the Contractor shall prepare and submit the Closeout Report in the form and manner designated by the County. The Closeout Report shall include the reporting of expenses and accruals through the last day of the Fiscal Year.

The Closeout Report is mandatory and due on July 15<sup>th</sup>. If the 15<sup>th</sup> falls upon a weekend or holiday, the due date shall be revised to the closest, earlier business day. Closeout Forms will be released to Contractors on May 1<sup>st</sup>.

The Contractor must ensure that any and all invoices are submitted and finalized prior to the submission of closeout. Invoices received after the Closeout will not be paid.

If the Contractor determines a need to revise its Closeout, the submission(s) must be received by CSS 10 days from the request but no later than August 30<sup>th</sup>. Revisions will require the written signature and approval of the Contractor's Executive Director. After this date, all closeouts are considered final and the Contractor's reported numbers will be reported as such for purposes of State reporting and audits.

Single Audit Submission Requirements

Pursuant to the Record Retention and Inspection/Audit Settlement provision of the Contract (typically Paragraph 8.38 and Sub-paragraph 8.38.6, Independent Audit Requirements of the Contract's Standard Terms and Conditions):

8.38.6.1 Uniform Guidance: 2 CFR 200 requires that organizations receiving Federal awards, including pass-through awards, have annual audits, which shall be performed by an independent auditor, Contractor shall adhere to the requirements contained in Uniform Guidance: 2 CFR 200 as well as the following:

8.38.6.1.1 Contractor shall obtain a Single Audit Report (or Program Audit Report, as appropriate) for each Fiscal Year.

8.38.6.1.2 Contractor shall forward its Single Audit Report to County's Compliance Manager at the end of each Fiscal Year.

## **POLICY:**

The following actions by a subrecipient will result in sanctions by the County of Los Angeles Community and Senior Services (CSS):

1. Any funds paid to a subrecipient in excess of the amount to which the subrecipient is finally determined to be entitled under the terms of the subaward;
2. Miss-expenditure of funds in violation of the terms and conditions of the subaward;
3. Failure to repay final debts within the timeframes prescribed by CSS;
4. Failure to respond to CSS in a timely manner;
5. Willful disregard of the contract requirements, willful disregard of the requirement of the law, gross negligence, or failure to observe accepted standards of administration;
6. Incidents of fraud, malfeasance, or misfeasance;
7. Failure to comply with the contract's Performance Requirement Summary (PRS).

## **SANCTIONS AND REMEDIES**

### **Sanction Authority**

The Standard Terms and Conditions of each Contract, provides CSS authority to sanction a Contractor for non-compliance. Only the Contracting Services Branch has the authority to apply sanctions to a Contractor. Sanctions will be applied by the Contract Management and Contract Compliance Managers.

### **Sanction Types**

There will be six (6) types of sanctions that CSS may at its sole discretion impose on its Contractors to address instances of non-compliance as follows:

1. Suspension of payments;
2. Suspension of Contract services;
3. Termination of Contract;
4. Referral to the Office of the Los Angeles County Treasurer and Tax Collector; and
5. Placement in the Contractor Alert Reporting Database (CARD);
6. Any actions outlined in the contract's PRS.

The type of sanction(s) will depend on the issue of non-compliance and will be determined by the Contract Compliance Division.

If the violations are of a more serious nature (e.g. fraud and abuse) and CSS forgoes the resolution process to take immediate action or CSS does not obtain a satisfactory corrective action through the resolution process, CSS may take any of the following remedies or sanctions against the subrecipient.

1. Temporarily withhold cash payments pending correction of the deficiency by the subrecipient;
2. Make an administrative offset against other requests for reimbursements;
3. Disallow all or part of the cost of the activity or action not in compliance;
4. Wholly or partially suspend or terminate the subaward;
5. Recommend the debarment of the subrecipient to a Federal awarding agency;
6. Withhold further sub-awards from the County;
7. Demand repayment of the miss-expended funds from a non-Federal source;
8. Declare the subrecipient high risk;
9. Remand the subrecipient to the County Tax Assessor for legal action;
10. Take other remedies that may be legally available;
11. Any actions outlined in the contract's PRS;
12. Initiate County debarment proceedings.

### **Debt Collection**

In instances where the subrecipient has miss-expended funds and CSS does not obtain a satisfactory resolution or corrective action, the following debt collection procedures will apply:

CSS will notify the subrecipient in writing of the debt, its appeal rights, the date that the debt will be considered delinquent, and the sanctions if the debt is not repaid. Any and all costs associated with the debt collection activities will be charged to the subrecipient.

### **Methods of Repayment**

The subrecipient will be required to repay those funds through one of the following methods:

Lump Sum or Installments: A non-Federal or non-County repayment should be done expeditiously, either as a lump sum or as installments following approval by the County or when required by the funding agency, to resolve a debt. The maximum amount of time that may be allowed for the installment method of repayment is two years if approved by the County or funding agency. A cash repayment is the only method of reimbursement when the miss-expenditure was due to:

- Willful disregard of the requirement of the law, gross negligence, or failure to observe accepted standards of administration.
- Incidents of fraud, malfeasance, or misfeasance.

Any debt involving fraud or abuse shall be repaid and cannot be offset by stand-in costs. No other means of settlement will be considered. Funds collected in repayment of these types of debts will be returned to the fund source and must be returned to CSS.

When the debt was not a result of fraud or abuse, the cash repayment of the disallowance is a credit to the subaward and year of appropriation to which it was originally charged.

Failure to repay the disallowed costs within the prescribed timeframes will result in further imposition of sanctions.

**Stand-in Costs:** Stand-in costs are non-Federal costs that may be substituted for disallowed subaward costs when certain conditions are met. Stand-in costs must meet the following criteria:

- To be considered, proposed stand-in costs shall have been actually incurred allowable subaward costs that have not been charged to the subaward, included within the scope of the audit, and accounted for in the auditee's financial system as required in the Uniform Guidance. Cash match (i.e., expenditures of the organization used as match) in excess of the required match may also be considered for use as stand-in costs.
- To be accepted as stand-in costs, costs must come from the same fiscal year specified by the funding source, as the costs that they are proposed to replace, and they must not cause a violation of the administrative or other cost limitations. Each of the separate criteria for consideration of proposed stand-in costs is discussed below:

**Criterion: Must be allowable costs that were actually incurred for the benefit of the subaward and paid by a non-Federal/County fund source.** Thus, for example, the dollar value of in-kind donations cannot be recognized as stand-in costs. Also, inasmuch as costs must be net-of-credits under the governing cost principles, the dollar value of discounts cannot be considered as an allowable grant cost.

**Criterion: Must have been included within the scope of the subrecipient's single audit (not necessarily tested but potentially subject to testing).** This means that the costs must be recorded and included in the financial statements presented by the Contractor to the auditor for audit. Failure to include unbilled costs disqualifies the costs for stand-in consideration.

**Criterion: Must have been accounted for in the subrecipient's financial system.** This means that the unbilled expense must be recorded and documented in the subrecipient's books of accounts. It cannot be presented as a separate consideration outside the entity's accounting system.

**Criterion: Must be adequately documented in the same manner as all other subaward costs.** This means that the unbilled expense must be treated in a manner consistent with cost principles affecting other expenses, including but not limited to the cost allocation methodology, cost classification methodology, and supporting documentation requirements.

**Caution:** Stand-in costs cannot be created using circumstances or conditions that appear to be legitimate liabilities if no actual costs are incurred by any entity.

**Example:** The subrecipient provides free space for a subaward program in a building that has been fully depreciated. The only facility-related costs the subrecipient actually pays are for general maintenance. A liability created by the subrecipient related to rental costs that were never paid is not a legitimate stand-in cost. The only legitimate stand-in cost available in this example, assuming that all recording and reporting requirements have been satisfied, is an allocable share of the general maintenance cost based on square footage occupied, or another allocation method that would be more equitable.

Certain costs, including in-kind contributions, are not considered unpaid subaward liabilities, but rather as in-kind match; therefore, they cannot be used as stand-in costs because they cannot be charged to the subaward. Examples of other costs that are not stand-in costs include:

1. Uncompensated overtime;
2. Unbilled premises costs associated with fully depreciated publicly owned buildings;
3. Allocated costs derived from an improper allocation methodology;
4. Discounts, refunds, rebates;
5. Any State share of the cost of State or community college tuition.

### **Suspension of the Subaward**

After a determination has been made by CSS that there is adequate evidence to suspect serious violations have occurred within a subaward, CSS may suspend contract payments upon written notification setting forth the reasons for such suspension and the effective date.

The subaward will not be reinstated unless the subrecipient can provide sufficient corrective action including repayment of any miss-expended funds.

### **Termination**

The subrecipient will be notified in writing of the proposed action to terminate the subaward, the reason for the planned termination, and that the termination decision may be considered in evaluating future applications for funding by the County of Los Angeles.

Termination, as described in the Uniform Guidance at 2 CFR 200.339, allows for the following:

1. By CSS if the subrecipient fails to comply with the terms and conditions of the sub award;
2. By the Federal or State awarding agency or CSS for cause.

NOTE: When a subaward is terminated, the subrecipient remains responsible for compliance with the requirements for proper closeout of the subaward and accountability for all closeout adjustments and continuing responsibilities.

### **Revised Procedures**

When a Contractor fails to provide the required documentation in a timely manner, CSS will take the following actions:

1. Issue an initial letter/e-mail notifying the Contractor of the delinquency. The initial notification letter/e-mail will cite the contractual section that is delinquent, and will allow the Contractor two (2) business days to provide the required documentation. This notification letter/e-mail will also include the potential sanction(s) if the required documentation is not provided within the timeframe indicated above.
2. Failure by the Contractor to provide the required documentation with the established two (2) day timeframe will result in CSS sanctioning the Contractor by the close of the next (third) business day. The sanction notification will provide the Contractor's Executive officer with:
  - a. The reason for the sanction with the inclusion of contract language authorizing CSS to apply sanctions;
  - b. The non-compliance issue(s) quoting the Contract, law or regulation violation;
  - c. A copy of the initial notification;
  - d. What the Contractor will need to provide to lift the sanction.

### **Effect of Sanctions on Future Funding**

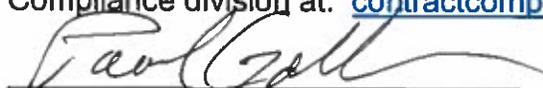
Sanctions will remain in effect until the Contractor becomes compliant. CSS will consider the Contractor's non-compliance during future funding decisions. Failure on the part of a Contractor to repay questioned/disallowed costs will result in a withholding of payments from a Contractor either during a program year or at year-end financial close-out.

### **ACTION:**

CSS and its subrecipients shall follow this policy. This policy shall remain in effect until such time that a revision is required.

### **INQUIRIES:**

If you have any questions regarding this Directive, please contact the Contract Compliance division at: [contractcompliance@css.lacounty.gov](mailto:contractcompliance@css.lacounty.gov).



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