

**Chapter 2**  
**Contract**  
**Requirements**

## **Chapter 2: Contract Requirements**

### **Section 1: Program Requirements**

Program requirements, in addition to the service or intervention specific information contained in the documents discussed in chapter 1, are contained in various documents, including the contract agreement, amendments, scope of services, appendices, schedules and worksheets. Some of the more significant program requirements are discussed below.

#### **Client Eligibility**

Client eligibility requirements for HIV Prevention programs vary and may include, but are not limited to:

- Being at risk for HIV
- Being HIV-positive
- Criteria relating to age, gender, race, ethnicity, sexual risk and substance abuse

Programs should only enroll individuals into their HIV Prevention program if they meet the eligibility criteria outlined in the scope of services or in the intervention addendum.

Please review the scope of services and/or contact your HIVCS Contract Manager with specific eligibility questions prior to enrolling clients into your Prevention program.

Eligibility should be documented and maintained in the client's record to provide evidence that eligibility has been verified and the intervention has been thoroughly explained to the participant. For example, if the contract is using an evidence-based intervention that targets men who have sex with men (MSM) of color, you must provide and/or collect enough information about the client to be confident that the client meets these eligibility requirements. Eligibility documentation must be made available at the time of a site visit.

#### **Documentation of Client Services**

Agencies that receive Prevention funds must keep a record of services provided to clients. Certain Prevention contracts may include Appendix F: Required Data Elements which outlines data elements kept in the client chart and entered in the reporting system for each service type.

Services must be recorded in individual client charts. Acceptable forms of documentation include, but are not limited to: sign-in sheets, group notes, individual counseling notes or outreach summary reports. Documentation methods should meet requirements of relevant certification and licensing bodies. HIVCS will often provide documentation for forms customized for each service category, which, if used, meets all of these requirements. If you choose not to use the form, you must ensure that the form used collects at least the same minimum required data elements. Alternatively, electronic client records that include the same required data elements may be utilized. All client records must be maintained in a manner that ensures client confidentiality.

Upon request, agencies must make records available for review by HIVCS, NYCDOHMH, CDC, or other authorized oversight agencies.

## **Quality Assurance**

Agencies must make efforts to evaluate and improve the quality of services provided to clients. HIVCS expects Prevention-funded contractors to regularly conduct quality assurance activities as per the scope of services, which may include: client satisfaction surveys, case conferences and staff supervision. Activities of external review bodies, such as reviews done by the Island Peer Review Organization (IPRO), may not substitute for internal programs. Agencies may describe how they have incorporated findings from external reviews into their program's quality assurance activities.

Contractors must detail quality assurance activities in the contract's scope of services and report them in monthly Program Narrative Report (PNR) (see Chapter 4).

Please note that NYCDOHMH Project Officers (PO) may also engage in Quality Assurance activities with you related specifically to the implementation of the funded intervention(s).

## **Grievance Procedures**

### **Prevention Contractor Grievance Policy**

Clients may occasionally perceive problems in accessing or receiving services. Individual clients may have complaints about your program's design, the quality of services, or perceived barriers to service. These client complaints should be taken seriously and treated as a potential quality improvement indicator.

HIVCS requires that your program establish a written grievance procedure so that program clients can report such problems without worrying about losing services or alienating agency staff. The procedure should be distributed throughout your agency and both staff and clients should be informed about its existence. Staff should understand their responsibilities in the process.

Grievance procedures vary among different types of service providers. You may use an agency-wide grievance procedure or you may develop a grievance procedure specifically for the Prevention program. It is important that any type of grievance procedure is clearly documented, including timeframes for each step of the process, and widely publicized among program participants.

### **HIVCS Grievance Policy**

HIVCS has established grievance procedures for HIV Prevention contractors and clients who experience barriers, have negative experiences with HIVCS staff or an HIVCS/NYCDOHMH-funded agency, or suspect inappropriate activities related to the HIVCS contract ("whistleblower grievances"). This Grievance Policy (see below for the website address which contains the Grievance Policy) is not meant to replace usual communication with HIVCS' staff or between clients and a NYCDOHMH/HIVCS-funded agency. If a contractor or client wishes to appeal a decision made by a staff member,

it should first be discussed with that person and his or her supervisor. If the matter is still not resolved, a formal grievance may be filed. Please note that this policy is not meant to address internal personnel issues that may occur within an agency.

Formal grievances must be submitted in writing to the HIVCS Grievance Officer (GO). If the grievant requests anonymity, the GO will make every effort to honor this request. HIVCS will not tolerate any retaliation against consumers, community members or staff for complaints made in good faith. HIVCS is committed to resolving all contractor grievances within our jurisdiction in a timely, efficient and thoughtful manner. If the grievant is not satisfied with the HIVCS resolution, the grievant can appeal the resolution to NYCDOHMH. The HIVCS grievance policy, procedure and forms are located on the HIVCS website at:

[http://www.healthsolutions.org/hivcare/Docs/Grievance\\_Policy\\_and\\_Form\\_FINAL.doc](http://www.healthsolutions.org/hivcare/Docs/Grievance_Policy_and_Form_FINAL.doc)

## **Evaluation**

Evaluation requirements are outlined in the Scope of Services and/or Evaluation Addendum (if applicable).

Prevention programs must work closely with NYCDOHMH to carry out any required outcome evaluation activities. NYCDOHMH will work with programs to decide what will be evaluated and what methods will be used to collect and analyze data. For some contracts, an Evaluation Addendum has been created to outline evaluation activities for the contract.

For some contracts, required evaluation data has been added as a required data element on Appendix F.

## **Chapter 2 : Contract Requirements**

### **Section 2: Fiscal Requirements**

The fiscal requirements for your contract are contained in various documents including the contract agreement, amendments, scope of services, appendices, schedules and worksheets. Some of the more significant fiscal requirements are discussed below.

#### **Contract Payments**

Contract payments generally occur as an advance, initial payment, disbursement (regularly scheduled payment), or final payment. Amounts paid will be the net of any amount disallowed for that period and any amount of repayment of a contract advance.

#### **Advances**

Advances may be possible at the beginning of the contract term. Availability of the advance option is determined per service category and the percentage is determined by HIVCS and NYCDOHMH. Advances are available to assist contractors with cash flow during the first few months of the contract period. Requests for advances are usually made when submitting your contract or renewal package to HIVCS. If the option of an advance is available, contractors must request advances in writing by using the Advance Request and Reimbursement Instructions Form.

If your organization requests an advance, it will be issued soon after your contract is fully executed (generally within two weeks). For contracts with 12-month budget periods, ten percent of the advance amount is typically recouped from each monthly payment, beginning with the first payment, until the full advance has been recovered by HIVCS. Advances on contracts with a budget period of less than 12 months will be recouped according to a reasonable schedule determined by the length of the contract.

Advances must be maintained in an interest bearing account and accrued interest must be reported and submitted with your final contract report.

#### **Initial Payment**

Some contracts, generally those with deliverables-based reimbursement, may receive an initial payment upon execution of the contract. If this applies to your contract, it will be indicated in the scope of services and/or agreement.

#### **Disbursements**

Regular disbursements, or payments, are made on the basis of services reported, expenses reported, and/or deliverables achieved, depending on your contract's reimbursement methodology. As such, disbursements are directly related to reporting requirements (see chapter 4) and are timed in relation to the reporting schedule.

Disbursements are triggered by the following methods:

- **Cost-based** – submission of the electronic data extract, Program Narrative Report (PNR), and monthly expenditures submitted via the MER.
- **Performance-based** - submission of the MPR (also known as the client-level data extract) and the PNR.
- **Deliverables-based** – submission of hard copies of your reimbursement request voucher and accompanying deliverable documentation as outlined in the Deliverables Schedule.

Disbursements are made by way of check or electronic funds transfer (EFT), which includes all payments being processed in a given payment cycle for all contracts held with your agency.

Contractors wishing to be paid via EFT must complete the EFT enrollment form, which requires the submission of a cancelled check.

### **Disallowances**

Expenditures (cost-based), reimbursable services (performance-based) or vouchers (deliverables-based) submitted must be equal to or less than budget lines, service family MRA, or deliverable allocation listed in your approved budget, SLRAT, or deliverable schedule. HIVCS will disallow reported costs/services/deliverables that exceed the corresponding approved amount without prior written approval.

Disallowances may also result from calculation errors, other inaccuracies in your monthly report, or failure to submit adequate support documentation when requested. If a portion of the request for reimbursement is disallowed, your program will be reimbursed for all reported costs/services/deliverables less the disallowed amount. Disallowances will be reflected in the payment documentation that is sent with your reimbursement check. HIVCS staff will help you make any necessary adjustments and corrections.

### **Description of Contract Costs**

There are two major types of costs: program costs and administrative costs. Program costs are considered direct, while administrative costs are considered indirect. Other costs may be considered unallowable depending on the funding source.

#### **Program Costs**

Program costs are the costs incurred as a result of direct service delivery. These costs are incurred exclusively when providing a specific service to a client or his or her family members. Examples of program costs are:

- ✓ salaries and related fringe benefits for staff who provide direct services to clients, their supervisors, and other staff who directly support these individuals;
- ✓ consultants who provide direct services to clients, supervise program staff, develop program materials, or perform other program functions;
- ✓ office supplies that directly support program activities such as folders for client records and files;
- ✓ program supplies such as educational materials, medical supplies and other supplies used for the program;
- ✓ Space/rent costs associated with program staff;

- ✓ Utilities associated with program staff or space;
- ✓ Telephone or communications cost associated with program staff or space
- ✓ printing and photocopying of medical forms, program materials and other materials used by or for program participants;
- ✓ equipment used for direct service delivery;
- ✓ travel costs for program clients and program staff;
- ✓ general liability insurance associated with program staff or space;
- ✓ maintaining client records, including client and service data entry.
- ✓ salaries and fringe benefits staff who produce, review and sign monthly program reports.

### **Administrative Costs**

Administrative costs are the costs incurred for usual and recognized overhead, including established indirect rates for agencies; and other types of agency-wide support such as general quality assurance, quality control and related activities. Administrative costs must not exceed 12% of your total budget. The sum of these costs is budgeted under "Indirect Costs/Program Administration." For Prevention contracts, all administrative costs must be included in the indirect cost line. Examples of administrative costs are:

- ✓ salaries and fringe benefits for accounting, secretarial and management staff, including those individuals who produce, review and sign monthly fiscal reports;
- ✓ consultants who perform administrative, non-service delivery functions;
- ✓ general office supplies related to administrative functions;
- ✓ general office printing and photocopying related to administrative functions;
- ✓ travel costs for administrative and management staff;
- ✓ General liability insurance associated with administrative staff or space;
- ✓ audit fees

### **Unallowable Costs**

The CDC and NYCDOHMH have issued policies about how their funds may be spent. The following is a list of unallowable costs for Prevention programs.

This may not be a complete listing of all unallowable costs, and some contracts may have different allowances. Contact your Contract Manager if you have questions about allowable and unallowable costs.

- Lobbying activities
- Medical care (except for services specified in NPP)
- Services reimbursed by third party insurance/payers
- "Bleach Kits"/syringes (except for Syringe Exchange Program)
- Items that are not related to the program as incorporated in the scope of services
- Executive Director's salary not to exceed 15 percent (this is usually 5 percent or less, or accounted for in administrative/indirect costs)
- Costs for travel outside of New York City is not generally allowed, unless this type of travel is pre-approved by NYCDOHMH and HIVCS
- Hotel accommodations unless NYCDOHMH and HIVCS authorizes travel outside of New York City
- Fixed assets (no construction/major renovation costs)
- Capital costs

- Male and female condoms and lubricant (except specialty condoms if specified in budget as such). *NYCDOHMH provides these to contractors at no cost.*
- Finger cots
- Dental dams
- Cash awards to clients or other organizations
- Cash or cash-equivalent incentives for rapid HIV testing

## **Fiscal Management and Record Keeping**

### **Support Documentation**

For cost-based contracts, you are required to maintain original documentation that supports all contract expenditures. While you are not required to submit this material to HIVCS on a monthly basis, it must be made available to HIVCS staff during site visits or as part of back-up documentation review. Appropriate documentation includes, but is not limited to:

- ✓ labor distribution or other payroll report detailing personnel services expenditures for program staff;
- ✓ properly authorized timesheets showing percentage of effort for each of the positions listed in the personnel services section of your approved budget;
- ✓ accounts payable computer print-outs or bank statements detailing cash disbursements;
- ✓ general ledger trial balance reports detailing opening balances for the start of the reporting period, changes throughout the month and the closing balance at month's end;
- ✓ original source documentation, such as purchase orders, invoices and receipts for all expenses including fringe benefits
- ✓ bank statements and canceled checks;
- ✓ details of competitive bids for equipment purchases (see section 2.1.4.);
- ✓ consultant agreements;
- ✓ descriptive narrative explaining purpose of expenditures and number of units purchased;
- ✓ methodology for allocating shared costs;
- ✓ evidence of payroll tax filings
- ✓ personnel files corroborating job titles and annual or hourly compensation for contract-funded employees

Once HIVCS requests such documentation, your Contract Manager will need to review it before authorizing payment for outstanding monthly expenditure reports.

### **Allocated Costs**

If purchases are made for more than one program, you must document how costs were allocated between programs. In the case of shared operating expenses such as rent, electricity, or telephones, you should describe the method of sharing the cost between programs in the budget. Depending upon the type of cost, allocation methodologies may include:

- ✓ program Full Time Equivalent (FTE) as a percentage of total agency FTE;
- ✓ contract budget as a percentage of total agency budget;

- ✓ HIV Prevention services as a percentage of total agency services.

### **Documentation of Staff Time and Effort Allocation**

Your agency must maintain a time allocation system for reporting the hours actually worked by the staff on the Prevention contract. This requirement is explained in the following Public Health Service Guideline:

*The federal Public Health Grants Policy Statement requires your agency to maintain a time allocation system that will allow you to report the hours actually worked by staff on the Prevention contract. The amounts charged to grant-supported projects for personnel services must be based on time and effort reports that represent actual work performed by the employee during the periods covered and not merely budgeted time allocation. The time and effort report must be signed by the employee and a responsible supervising official having first hand knowledge of the work performed. Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization. Budget estimates do not qualify as support for payroll charges (OMB A-122).*

### **Purchase of Equipment**

#### **Definition of Equipment**

Equipment is defined as any single item with a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of \$5,000 or the capitalization level established by your agency for financial statement purposes. Title to all property acquired with Federal Prevention funds during the term(s) of your contract remains vested with the United States Department of Health and Human Services. HIVCS reserves the right to take possession of this property on behalf of the federal government if your contract is terminated early or on evidence that the equipment utilization is not consistent with the terms of the contract

#### **Acquisition of Property/Bid Requirements**

To purchase equipment with a unit cost of \$5,000 or more, you must solicit at least three competitive bids. You must maintain documentation of the bids (vendors' names and phone numbers, dates of quotes, and price quotes received) within the program's records. Documentation must be made available for review by HIVCS staff or designee upon request. If you do not purchase the equipment from the vendor with the lowest price, include an explanation for the choice in the property records.

#### **Property Management**

The federal Office of Management and Budget (OMB) requires that all property acquired with federal funds be recorded in an inventory that includes the following information:

- ✓ a unique identifying inventory number;
- ✓ description of the property;
- ✓ manufacturer's model and serial numbers, federal stock number, national stock number or other identification;

- ✓ source for the acquisition of the property (CFDA#93.940), including Prevention program contract number;
- ✓ acquisition date;
- ✓ acquisition cost, including purchase price, shipping, handling, installation charges, import taxes or other reasonable costs associated with the purchase and delivery of equipment;
- ✓ percentage of the acquisition cost paid by the Prevention contract;
- ✓ location, use and condition of property;
- ✓ ultimate disposition data, including the method of disposition, date of disposal, sales price, and the method used to determine current fair market
- ✓ value where a recipient compensates the federal awarding agency for its share.

In addition, property acquired with federal funds must be marked to indicate ownership by the federal government.

### **Equipment Inventory Logs**

HIVCS requires that you submit two inventory logs, itemizing all equipment purchased with program funds, with the final expenditure report (see Section 3.8). One log itemizes equipment purchased in the current year. The second log itemizes all equipment purchased since the inception of the contract, including the equipment purchased in the current year providing that this is not the first year of your contract. HIVCS may examine your inventory reconciliation during an audit or site visit. Please note that all equipment purchased with contract funds is technically the property of the federal government.

Contractors should:

- ✓ take a physical inventory of property at least once a year and reconcile it with the program's property records;
- ✓ develop a control system to insure adequate safeguards to prevent loss, damage or theft of property;
- ✓ maintain the property in good, working condition

### **How to Handle Equipment at Contract Termination**

Upon contract termination, you must submit an equipment log and a letter to HIVCS indicating that you wish to retain or otherwise dispose of any equipment that has not exceeded its useful life.

In certain instances, HIVCS may need to obtain approval from NYCDOHMH to allow you to keep equipment.

### **Accounting and Audit Reviews**

Under the terms of your cost-based contract, you must maintain complete, current and accurate records that substantiate and justify all expenditures. Records must demonstrate that no other source of revenue has been used to fund the actual services provided. Written evidence to support all journal entries (e.g., revenues and expenses; accruals; adjusting entries) must be retained on file.

Under the terms of your performance-based contract, you must adhere to general accounting principles, including participating in an annual financial audit and an A-133 audit, if applicable.

### **Annual Audits**

Your contract requires that you submit two signed original copies of your annual audit report to HIVCS within 30 days after receipt of the audit report or nine months after the end of the audit period, whichever is earlier. The audit report must be prepared by an independent certified public accountant (CPA) and must conform to Government Accounting Standards as promulgated by the Comptroller General of the United States. The audit package submitted to HIVCS must include the following:

- ✓ Agency-wide audited financial statements must include a two-year comparison of financial data (the audit year and the previous fiscal year). If the audit does not contain this two-year comparison, an explanation must be provided of its omission;
- ✓ A-133 audit report if applicable; or, if not applicable, a letter from the auditor or Chief Executive Officer stating the reason for the A-133 audit report exemption. When claiming exemption, a listing must be provided of all federal grants and the amounts expended against each one;
- ✓ Management letter (as per OMB Circular A-133, section 320-Reporting requirement, part (F) Request for report copies, requirement that the subcontractor must include copies of management letters issued by the auditors in the package submitted to the grantors).

The A-133 Reporting Threshold for submission of audits required by OMB is \$500,000. If your organization spends less than \$500,000 of federal funds during your fiscal year, an A-133 audit is no longer required. You are still required to maintain accounting records, which must be available for review by HIVCS or its auditors/agents if requested.

You must undertake either a single audit or program-specific audit as described in the applicable Office of Management and Budget Circular. Your auditor can advise you on audit requirements for your organization. An allocated portion of the cost of such an audit may be charged to your program's budget as part of the Indirect Costs/Program Administration budget line.

Prevention funds, other than City Council initiatives, are disbursed by the U.S. Department of Health and Human Services, Center for Disease Control (CDC), CFDA # 93.940, New York City Council and New York City Tax Levy. Your auditor will require this information.

Failure to submit the required audits or to satisfactorily resolve audit findings may result in your contract being placed on conditional status and/or a delay in the execution of your contract and/or reimbursement of expenses.

Your auditor is required to include your Prevention grants in their sampling of federal grants at least once every three (3) years.

### **Fiscal Contract Reviews**

In addition to reviewing your annual audit, HIVCS staff will, at their discretion, perform periodic site visits (please see Chapter 5, Section 2 - Site Visits). Fiscal reviews may also be performed by HIVCS' independent auditors, representatives of NYCDOHMH, the City Comptroller's Office, or CDC representatives.

All books, ledgers, supporting records, worksheets and other financial records requested in conjunction with such a fiscal review should be available at the time of the site visit. Such documentation may include, but is not limited to, the items listed as support documentation in Section 5.2.2

### **Internal Controls Questionnaire**

For performance-based contracts, HIVCS does not monitor expenditures. To insure your fiscal infrastructure is robust enough to manage federal funds responsibly, and to help you address any deficiencies during the first several months of each contract year, HIVCS may ask you to complete a questionnaire about your organizational fiscal and administrative controls, including issues of internal controls, asset management and MIS security. Contractors will have approximately one month to complete and submit the questionnaire to HIVCS. HIVCS Fiscal Analysts will review completed questionnaires and discuss any issues of concern with contractor staff.

HIVCS will generally use the questionnaire for quality management and not for disciplinary purposes. HIVCS staff will discuss the questionnaire with you to point out areas for improvement.

The internal controls questionnaire will be administered per *contractor*, not per contract.

### **Single Payment Confirmation**

If, under your performance-based contract, you provide reimbursable services that are also payable by other sources (Medicaid, insurance, other contract funding, etc.) you must ensure that services reported to this contract are not also reported or billed to any other payer or funding source.

## **Chapter 2: Contract Requirements**

### **Section 3: Administrative and Contractual Requirements**

#### **Records Retention**

Your agency must retain all records relating to the contract for at least six years after the end of the current year. These include, but are not limited to, client records, fiscal documents and contract documents. City, state, and federal auditors or others authorized by HIVCS may request access to these records for six years after the end of the contract period.

#### **Confidentiality**

All reports, information, presentations (including conferences) or data related to your contract are confidential. Your agency may not release contract information to any individual or organization without first receiving written approval by HIVCS and the NYCDOHMH.

Your agency and HIVCS agree to comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Please refer to your contract boilerplate for more information about HIPAA.

#### **Publication and Audiovisual Product Review and Approval**

Under the terms of your contract with Public Health Solutions, all publications, brochures, audio-visual products and web sites you produce using HIV Prevention funds require prior review and written approval by Public Health Solutions and NYCDOHMH. All publications, websites and audio-visual products must contain the following acknowledgment of the funding source:

*If partially funded by NYCDOHMH - **"This project was funded in part by the New York City Department of Health and Mental Hygiene through a contract with Public Health Solutions."***

*If completely funded by NYCDOHMH - **"This project was funded by the New York City Department of Health and Mental Hygiene through a contract with Public Health Solutions"***

You must submit a draft version of all publications or audiovisual materials at least two months prior to the date that you wish to make them public.

For website review procedures, contact your Contract Manager.