

Central Contracts and Legal Services (CCLS)
CCLS Vendor Agreement Review

This completed form must be submitted to DSHS Central Contracts and Legal Services (CCLS) to request review and signature of a vendor-created agreement (Vendor Agreement) when the Vendor Agreement does not meet all 4 conditions listed below.

Per [DSHS Administrative Policy 13.25: Vendor Agreements and Non-Standard Contracts](#), DSHS Administrations may review and sign Vendor Agreements without obtaining prior CCLS review only if all of the following 4 conditions are met:

1. The goods or services covered by the Vendor Agreement were acquired in compliance with [39.26 RCW](#);
2. The total value of the Agreement is less than \$50,000;
3. The vendor will not have unsupervised access to any DSHS client under the terms of the Agreement; and
4. The vendor will not have access to any Protected Health Information (PHI) under HIPAA or to any other DSHS Category 3 or 4 data (as those categories are defined in Chapter 3 of the [DSHS Information Security Manual](#)).

If any of the above conditions are not met, complete Section 1 of this form and send it, along with a copy of the Vendor Agreement and all other terms and conditions that would apply to the Agreement to:

CCSContractsCounsel@dshs.wa.gov.

Section 1. To request an initial review, fill out only Section 1 and send the form and vendor agreement to CCLS.

1. Administration	2. Division	
3. DSHS Contact Manager	4. Vendor Agreement Title	
5. Acquisition Method: Choose an item. Competitive Solicitation Number (if any): Statewide / NASPO / GPO Number and Type (if any): If Competitive Exempt, Exemption Category(ies):	6. Contractor Name Is Contractor Information entered into the ACD? <input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Acquisition Method: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes : Has the ITAR been approved? Requested and Pending Was there a Security Design Review? Choose an item. Was the IR (formerly ITPA) approved? <input type="checkbox"/> Yes <input type="checkbox"/> No	8. Contract Start Date: Contract End Date:	9. Total Maximum Consideration
10. Purchase Deadline: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:	11. Purpose of contract:	
12. Contract Funding Source Federal Amount: \$ State Amount: \$	13. Is Contractor a subrecipient of Federal Grant Funds? <input type="checkbox"/> Yes <input type="checkbox"/> No	
14. Has an OVA for the same vendor and goods or services been reviewed by CCLS in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the previously reviewed contract number:		

<p>15. If performance based, what performance factors apply?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Identifies expected deliverables <input type="checkbox"/> Identifies performance measures <input type="checkbox"/> Identifies outcomes <input type="checkbox"/> Payment is contingent upon successful delivery <input type="checkbox"/> Includes incentives <input type="checkbox"/> Includes consequence for non-performance <input type="checkbox"/> Includes other method to ensure value received 	<p>16. If not performance based, is this Agreement out of scope or exempt? <i>Note: If exempt, please provide exemption documentation.</i> Choose an item.</p> <p>If out of scope, what is the reason? Choose an item.</p>
<p>17. Have you and your program read the Agreement and, if applicable, the Statewide Contract, Premier, or other GPO Agreement or NASPO Agreement with participating addendum? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Note: This form will be rejected if the Agreement has not been reviewed. The program is expected to review and understand the technical and substantive statements of work-related terms and conditions within the Vendor Agreement.</i></p>	
<p>18. What is the highest category of data that is being shared with the contractor: Choose an item. <i>For additional information about each category, see: Categorizing data for a state agency WaTech</i> This requires a Data Sharing Agreement, Data Licensing Statement, and unless an exception applies, a Data Security Requirements Exhibit. In addition to the above, if PHI is being shared, a Business Associate Agreement may be required.</p>	
<p>19. To which agreement category does this Agreement belong (check all that apply):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Client Services Agreement <input type="checkbox"/> Professional Services Agreement (not Client Services) <input type="checkbox"/> Software Licenses / Subscriptions: <ul style="list-style-type: none"> <input type="checkbox"/> Original Purchase of On-Prem Licenses <input type="checkbox"/> Original Purchase of SaaS Subscriptions <input type="checkbox"/> Renewal of On-Prem Licenses or SaaS Subscriptions <input type="checkbox"/> Renewal of On-Prem Software Service / Maintenance Agreement <input type="checkbox"/> Additional ON-Prem Licenses or SaaS Subscriptions <input type="checkbox"/> IT Equipment Purchase Agreement <ul style="list-style-type: none"> <input type="checkbox"/> Original Purchase of IT Hardware <input type="checkbox"/> Upgrade to existing IT Hardware (same manufacturer) <input type="checkbox"/> Renewal of Hardware Maintenance Agreement <input type="checkbox"/> IT Agreement – Infrastructure as a Service <input type="checkbox"/> Non-IT Equipment Purchase or Lease <input type="checkbox"/> Meeting, Conference / Seminar for DSHS employees <input type="checkbox"/> Meeting, Conference / Seminar for DSHS clients <input type="checkbox"/> Meeting, Conference / Seminar for DSHS Conference <input type="checkbox"/> Hotel <input type="checkbox"/> Interlocal Agreement 	
<p>20. Have you attached the Vendor Agreement, all other terms and conditions referenced therein (including agreements with subcontractors, third party software license, and any other relevant documents)? Choose an item. If “No” or “Don’t know,” please explain:</p>	
<p>21. Are all added exhibits, attachments, and accompanying agreements reference in the primary Agreement document (such additions may include a Data Sharing Agreement with Licensing Statement, Data Security Requirements Exhibit, a Business Associate Agreement, confidentiality agreements, and other documents)?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Yes <input type="checkbox"/> No; explain: 	

Section 2. CCLS Initial Review, to be filled out by CCLS Contracts Counsel for Program Review.

CCLS Reviewed by:

Date of Review:

For potential risk factor definitions, place cursor on the footnote number (i.e., i, ii, iii) provided for each item below.

1. Potential Risk Factors that are present in the Agreement:

- Requires Business Associate Agreement. **i** Section _____
Key / Program Comments:
- Requires Data Security Requirements Agreement. **ii** Section _____
Key / Program Comments:
- Entire Agreement / Superseding Clause. **iii** Section _____
Key / Program Comments:
- Confidentiality / Client Data Sharing. **iv** Section _____
Key / Program Comments:
- Indemnification. **v** Section _____
Key / Program Comments:
- Auto-Renewal. **vi** Section _____
Key / Program Comments:
- Deposit. **vii** Section _____
Key / Program Comments:
- Accuracy / Ambiguities / Discrepancies. **viii** Section _____
Key / Program Comments:
- Variable Pricing. **ix** Section _____
Key / Program Comments:
- Non-WA Jurisdiction / Venue / Choice of Law. **x** Section _____
Key / Program Comments:
- One-Sided / Unfair Cancellation Policy. **xi** Section _____
Key / Program Comments:
- Liquidated Damages. **xii** Section _____
Key / Program Comments:
- Consequential Damages Waive. **xiii** Section _____
Key / Program Comments:
- Limitation of Liability. **xiv** Section _____
Key / Program Comments:
- Prepayment. **xv** Section _____
Key / Program Comments:
- Early Termination Fee(s). **xvi** Section _____
Key / Program Comments:
- Additional Out-of-Pocket Expenses (Travel, Lodging, etc.). **xvii** Section _____
Key / Program Comments:

- Ownership of Work Product. **xviii** Section _____
Key / Program Comments:
- Additional Fees. **xix** Section _____
Key / Program Comments:
- Confidential Requirements. **xx** Section _____
Key / Program Comments:
- Warranty Limitations. **xxi** Section _____
Key / Program Comments:
- Modifications without Notice. **xxii** Section _____
Key / Program Comments:
- Marketing using DSHS logo/name. **xxiii** Section _____
Key / Program Comments:
- Insurance Provisions Don't Meet DSHS AP 13.13 Requirements. **xxiv** Section _____
Key / Program Comments:
- Subcontracting without prior approval. **xxv** Section _____
Key / Program Comments:
- Performance Based Requirements not met. **xxvi** Section _____
Key / Program Comments:
- If a Sole Source Contract, DES Required Language not included. **xxvii** Section _____
Key / Program Comments:

2. Other identified risks:

Key / Program Comments:

Section 3. Once CCLS completes the Initial Review, Program completes Section 3 and send this form to CCLS.

Please select one of the following.

A. The Program acknowledges that it has reviewed and understands the Risk Factors noted by CCLS in Section 2 and elects to accept these risks. The Program requests that CCLS execute the Vendor Agreement without modification or negotiation.

Division Director's Signature	Date	Printed Name
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OR

B. The Program acknowledges that it has reviewed and understands the Risk Factors noted by CCLS in Section 2 and elects to accept these risks. The Program requests that CCLS execute the Vendor Agreement without modification or negotiation.

Division Director's Signature	Date	Printed Name
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OR

C. The Program acknowledges that it has reviewed and understands the Risk Factors noted by CCLS in Section 2 and elects to accept these risks. The Program requests that CCLS execute the Vendor Agreement without modification or negotiation.

Division Director's Signature	Date	Printed Name
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Do not edit or delete below this line!

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- i **Requires Business Associate Agreement.** Whenever “Protected Health Information” (PHI) pertaining to DSHS Clients is being exchanged with a contractor, the possibility that a HIPAA-mandated Business Associate Agreement (BAA) is required must be investigated. If the contractor is not a HIPAA covered entity, the need for a BAA is almost a certainty. Whenever a BAA is required, a Data Sharing Agreement (DSA) with a Data Licensing Statement is also required. Also, a Data Security Requirements Agreement will likely be necessary.
- ii **Requires Data Security Requirements Exhibit.** A Data Security Requirements Exhibit (DSRE) is usually required when Category 3 or Category 4 data is being shared with a contractor. The criteria for inclusion of a DSRE are: DSHS data is being shared with a contractor and will be sent or transported to a location outside of a DSHS secured area (including his/her office); the contractor sends or transports data from a location outside of a DSHS secured area to DSHS; the contractor stores data on equipment, etc. not administered by DSHS (Example: Lap top computer, CD, etc., owned by the contractor). The DSRE may be waived and replaced with less stringent requirements when a very limited amount of confidential information will be transmitted.
- iii **Entire Agreement / Superseding Clause.** It is important to ensure that the Agreement contains all the terms that have been accepted by the parties. If there are terms that may be enforced by, or against, one of the parties, those terms must be included in the agreement. If there is no clause in the Agreement stating that all terms and conditions are set forth in the document, then it is possible that discussions with the vendor, emails exchanged with the vendor, and other documents may also contain enforceable terms and conditions that may bind DSHS. Additionally, if there are references in the Agreement to other agreements that will bind DSHS, such as third party software licenses, then those agreements must be presented to DSHS and included in the Contract File. If DSHS is not tracking all terms and conditions that govern an Agreement, DSHS cannot be certain it is acting in compliance with the Agreement. Likewise, if DSHS has expectations regarding a vendor’s performance of an Agreement, those expectations must be documented in the Agreement. The Agreement must be complete.
- iv **Confidentiality / Client Data Sharing.** If Clients’ Protected Health Information is being shared between a HIPAA covered DSHS program or department and a non-HIPAA covered vendor, a BAA is required. If Client data other than Protected Health Information is being shared with a vendor, it is considered Confidential (Category 3) and the security of that information must be contractually assured. There must be confidentiality clauses in the Outside Vendor Agreement that limits the vendor’s use of the data, binds the vendor’s employees and contractors to confidentiality regarding that data, and assures the destruction of the data upon termination of the Agreement or when the vendor no longer needs the data. If Clients’ Protected Health Information is being shared between HIPAA covered entities, a BAA is not required, but a reference to the applicability of the HIPAA Rules is warranted. **This is not a risk that the Program is allowed to accept without contractual obligations to protect Client data.**
- v **Indemnification.** Unless the Legislature has authorized DSHS to indemnify a vendor, any such indemnification clause would be unenforceable according to a Washington State appellate court opinion. See *Barendregt v. Walla Walla Sch. Dist.*, 26 Wn. App. 246, 611 P.2d 1385, 1980 Wash. App. If the vendor refuses to remove the indemnification clause, the following language should be added to the provision: “To the extent allowed under Washington law...” **If the contract contains a choice of venue/choice of law provision that applies another state’s laws to the interpretation of the contract, this is a risk that should not be accepted. When Washington law governs the interpretation of the contract, this is a risk that the Program may accept if the Vendor is aware that a clause requiring DSHS to indemnify the Vendor is currently unenforceable under Washington law.**
- vi **Auto-Renewal.** Auto-Renewal terms are a risk because they can obligate DSHS to continue services that it may not otherwise need. The time period for the delivery of a cancellation notice varies greatly, and many contracts require that a notice be sent three or more months in advance. It is very easy for contract managers to miss the cancellation deadline, which almost always means that DSHS must pay the full amount for another contract term. This is especially problematic if the contract term is a year or more. **This is a risk that programs may accept as there is no statute or policy prohibiting auto-renewal of contracts.**
- vii **Deposit.** Deposits are a risk because they are a form of advance payment for goods or services that have not yet been received, which is generally prohibited by RCW 43.88.160(5) – with some exceptions.
- viii **Accuracy / Ambiguities / Discrepancies.** Inaccuracies generally involve a misstatement of fact, with a simple example being an incorrect address. Ambiguities occur when a contract provision can be interpreted in more than one way, such as a delivery date with no specified time that some may interpret as “by close of business” while others interpret as being before midnight. Discrepancies arise when one contract provision conflicts with another, or with a statement in a supporting document, such as a quote that sets forth one price and a contract provision that sets forth another. **If the issues are minor, these are generally risks that the Program can accept, but it is highly advised that the issues be corrected before the contract is signed; if they are serious enough they can delay or prevent the execution of a contract.**

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- ix **Variable Pricing.** Prices for goods or services based on volume of purchases, on the CPI, or market conditions may be difficult to budget for, but if the formulae or pricing structure is clearly documented the risk is usually acceptable. If, for example, the criteria for price variations are not specified or if potential price increases are not constrained, the risk may not be acceptable and it may be best to forego the contract. **This is a risk that the Program may accept, and variable pricing may even be a desired feature of a contract.**
- x **Non-Washington Jurisdiction / Venue / Choice of Law.** If the Outside Vendor Agreement calls for a non-Washington jurisdiction, venue or choice of law, then much of the predictability regarding how a contract will be interpreted is lost. If another jurisdiction or venue is selected, disputes regarding the meaning of a contract or whether the terms of the contract have been fulfilled will be decided by a court in another state, or perhaps by a federal court in another state or country. Unless an AAG is licensed to practice in the state specified in the contract, a Washington AAG will not be able to manage proceedings that are conducted in that court, if the jurisdiction or venue is a foreign country, obtaining representation in that country is even more of a problem. If a non-Washington choice of law is specified, that means the laws of another state or country will apply to the interpretation of the contract. Clauses that refer to the release of information under a public records request, or that require DSHS to indemnify the vendor, may have a very different meaning in other states and countries, and perhaps will have no meaning at all. **This is a risk that the Program may accept, but could cause DSHS to incur excess litigation expenses.**
- xi **One-sided/Unfair Cancellation Policy.** It isn't uncommon to see provisions in a contract that allow the vendor to cancel or terminate the contract for a variety of reasons, but either do not allow DSHS to cancel or terminate the contract, or contain provisions that significantly curtail DSHS's ability to do so. Sometimes the cancellation policy applied to DSHS will require a long notification period with an extended time to cure. Such an imbalance may call into question whether the contract is truly performance based. More importantly, issues involving data security or patient safety may require immediate action on the part of DSHS. **This is a risk that the Program may accept.**
- xii **Liquidated Damages.** Liquidated damages are costs that a party agrees may be assessed against it if the party is allegedly in breach of a contract. Under Washington common law, the agreed-to liquidated damages must be reasonable, but unless alleged to be unreasonable, the costs are not set by a court of law and may have little to do with the actual losses born by the non-breaching party. The value such a provision can provide is that may negate the need for costly litigation, assuming the parties agree that a breach took place. **This is a risk that the Program may accept, but with caution.**
- xiii **Consequential Damages Waiver.** It is very common to see a provision in contracts in which the parties agree to waive their rights to assert consequential damages. Consequential damages are financial losses that are indirectly incurred due to a breach of contract. While the fees that must be paid to a replacement vendor would be considered direct damages should a current vendor breach a contract, the financial consequences (if any) due to the harm to DSHS's reputation is an example of what would be considered consequential damages. Most NASPO contracts contain a consequential damages waiver. **Provided that the waiver is mutual, this is a risk that the Program may accept.**
- xiv **Limitations on Liability.** Limitations on the monetary damages for which a party is found liable is risky, especially when the limitations only favor the vendor. Liability may include damages due to data breaches, personal injuries, breach of contract, and a vendor's infringement of third party software copyright protections. Even if the vendor has sufficient insurance to cover losses that DSHS may incur due to a vendor's misconduct, limitations on the damages a vendor must pay could render that insurance meaningless. It is very important that all risks that a vendor could pose to DSHS be assessed and understood before a broad limitation of liability provisions are accepted. Many such clauses exclude limitations on damages when there has been physical injury, which makes the provision less risky. Exclusion of limitations on damages due to data or security breaches, and software license infringement is highly advised as damages awards due to such misconduct can be very high. **This is a risk that the Program may accept.**
- xv **Prepayment.** Prepayment is any payment made in advance of the receipt of goods or services. In general, advance payments are prohibited by RCW 43.88.160(4)(e), unless the vendor makes a cash deposit or posts a surety bond to ensure that state funds are not jeopardized. The exceptions are limited to: equipment maintenance (there must be a written contract that does not extend for more than one year after payment is made), and for books, postage, and periodicals (see RCW 42.24.035). **Other than the a few specific exceptions adopted by the legislature, this is a risk that the Program cannot accept because it is, generally, contrary to Washington Law.**
- xvi **Early Termination Fees.** An early termination fee is a form of Liquidated Damages. It is a fee that would be imposed on DSHS if the contract must be terminated earlier than the agreed-to termination date. Payment of such fees is not prohibited by statute, and there may be valid reasons why such fees are imposed. Programs are advised to assess the likelihood that the contract will need to be terminated early before accepting this risk. **This is a risk that the Program may accept.**

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- xvii **Additional Out-of-Pocket Expenses (Travel, Lodging, etc.)** An unrestricted travel clause would allow a vendor to book travel that is unnecessary and/or inappropriate (think five-star hotels, first class flights, and high-priced restaurants). State employee travel is restricted and expenses curtailed by the policies stated in the Statewide Administrative and Accounting Manual (SAAM) and DSHS Policy, and it is highly advised that vendor travel be subject to the same restrictions. At the very least, the contract should clearly state that travel and travel costs should be approved by DSHS in writing in advance of travel arrangements being made. **This is a risk that the Program may accept, but generally there must be restrictions on the ability of the vendor to incur these costs.**
- xviii **Ownership of Work Product.** If a vendor is developing a product of some sort for DSHS, by law it is owned by DSHS unless there is a contractual provision to the contrary. However, many vendors wish to override the default laws and claim ownership of the developed product. This can pose a risk to DSHS in many ways, especially when the product is a software program, a system interface, or a manual of some sort. If the vendor owns the developed product and merely grants DSHS a license to use it, DSHS has no control over how that product is used and the vendor has the ability to distribute it to other agencies or to allow another customer to use it and to modify it should it need to be updated or customized. In general, when DSHS is paying for the product, it should retain control over the use and distribution of the product. **This is a risk that the Program may accept.**
- xix **Additional Fees/Changes to Charges.** Additional fees and changes to charges, especially when those fees or charge changes are not enumerated or are only vaguely quantified, may pose a budgetary risk to the Program. It is an issue to be worked out with the Programs fiscal staff. **This is a risk the Program may accept.**
- xx **Confidentiality Requirements.** Confidentiality requirements imposed by the vendor related to contracts and other business records, and to work product, are generally contrary to Washington State's Public Records Act, which is codified in RCW Chapter 42.56. If the vendor insists on confidentiality language, it is possible to agree to advance notification of a disclosure, with enough time allotted for the vendor to obtain a protective order from a court of competent jurisdiction in Washington state, prior to the release of responsive documents. **This is a risk that Programs should not accept.**
- xxi **Warranty Limitations.** Limited warranties of varying degrees are common in IT Outside Vendor Agreements, and pose the risk that flaws may not be discovered - or in the case of updates, not introduced - until after the warranty period has expired and there is no remedy available to DSHS. In addition to time constraints on the warranty period(s), there may be limitations on the coverage. Or remedies that DSHS may claim may be strictly limited to the vendor's reasonable efforts to remedy the problem, with no recourse available to DSHS if the vendor's efforts fail. **This is a risk that Programs may accept, provided there is an understanding that a very limited warranty may negate the Performance Based Contracting factors that the Program believes are present.**
- xxii **Modifications Without Notice.** It is very common for Outside Vendor Agreements to incorporate "click through" agreements that must be accepted prior to using Software as a Service offerings and which may change without advance notice. This is risky because new versions of agreements may include terms that are contrary to Washington law or pose risks that were not present in the original agreement. **This is a risk that Programs may accept.**
- xxiii **Marketing using DSHS Logo/Name.** The state Executive Ethics Board urges caution to state agencies any time a potential issue of an appearance of endorsement for a product or service may take place. Any use of the DSHS Logo, and any other apparent endorsement, could be seen as a misuse of state resources under [RCW 42.52.160](#) and/or [WAC 292-110-010](#). The awarding of a contract to a vendor is not considered to be an endorsement and may not be represented by the vendor as such. **Programs should consult with the DSHS Office of Communications regarding specific advertising requests.**
- xxiv **Insurance Provisions Don't Meet DSHS AP 13.13 Requirements.** DSHS Administrative Policy 13.13 establishes the standard insurance policies that all contractors are expected to carry, and the minimum coverage limits of each policy. It is recommended that a risk analysis be conducted to determine whether additional policies are required. For instance, cyber security insurance coverage may be required to protect DSHS from the consequences of data breaches. AP 13.13 allows a program's Assistant Secretary (or a designee) to approve an exception waiver for a specific contract. Such a waiver expires at the end of the contract term and must be re-approved if the contract is to be extended. **Programs may accept this risk provided the procedures enumerated in AP 13.13 are followed.**
- xxv **Subcontracting Without Prior Approval.** This type of provision entails several inherent risks. One risk is the possibility that a subcontractor may have been debarred or is otherwise prohibited from providing services to the state due to previous malfeasance. Other risks include lack of necessary qualifications, inability to abide by the terms agreed to by the contractor, quality control concerns and others. The ability of a vendor to subcontract without prior approval would be an especially risky provision if it appears in a professional or personal services contract. Often such contracts are awarded because of the unique skills, credentials, training, or abilities of the service provider. It is not uncommon for large vendors to subcontract their work, but contractually allowing it without prior notice and approval raises multiple concerns. **This is a risk that a Program may accept**

^{xxvi} **Performance Based Requirements Not Met.** RCW 39.26.180 requires: “To the extent practicable, agencies should enter into performance-based contracts.” Additionally, [DSHS’ Administrative Policy 13.16](#) requires that all contracts, other than those that are out of scope or have received an exemption, meet performance based requirements. Zero dollar contracts are “out of scope” as are contracts for which DSHS is being paid. **This is a risk that a Program may accept.**

^{xxvii} **Sole Source Contracts – Specific Provision Required.** Enterprise Services Policy POL-DES-140-00, as explained in FAQs published 04-03-2019, requires all Sole Source Contracts and Material Amendments to contain the following language:

“DES Sole Source Approval: The provisions of Chapter 39.26.140 RCW requires this sole source contract to be filed with and approved by the Department of Enterprise Services (DES). The effective date of this [*contract or amendment*] is either upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.”

The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective. [FAQ Published 04-03-2019]. DES **will not** approve a sole source contract that does not include this language, therefore, **this is not a risk that a Program may accept.**