

Administrative Policy No. 13.16

Subject:	Performance-Based Contracting
Information Contact:	Central Contracts and Legal Services , MS45811
Authorizing Sources:	RCW 39.26.180 Contract Management DSHS Admin Policy 13.10 Central Contracts and Legal Services (CCLS) DSHS Admin Policy 13.11 Monitoring Contractor Performance DSHS Admin Policy 13.08 Operational (Purchased) Goods and Services
Effective Date:	August 16, 2012
Revised:	July 12, 2023
Approved By:	<u>Original signed by Pearlette Ramos</u> Senior Director, Office of Justice, and Civil Rights

Purpose

This policy provides standards governing Department of Social and Health Services (DSHS) performance-based contracting and the development of such contracts. This policy, and any referenced procedures or guidelines, are intended for internal use only. This policy is not intended, nor can it be relied upon, to create any substantive or procedural rights enforceable by any party involved in matters with DSHS.

Background

RCW 39.26.180 requires that, to the extent practicable, all state agencies enter into performance-based contracts. All new contracts and contract renewals should include measurable performance standards for such things as deliverables and outputs, quality, outcomes, or timeliness. Incentives and consequences are additional methods which can be used to strengthen performance under the contract and better ensure quality goods and services are provided to DSHS and the state. RCW 39.26.180 also states that payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.

All performance-based contracts must be actively managed and monitored to ensure

performance-based contract standards are met.

Scope

This policy applies to all organizational units of DSHS in the drafting, negotiation, signing, and monitoring of contracts and amendments of the following types:

- Goods and services
- Client services
- IT goods and services
- Interlocal agreements
- Purchase orders
- Datashare agreements that include a fee for service

This policy does not apply to the following types of contracts:

- Zero-dollar contracts
- Contracts under which DSHS is to be paid but does not incur any payment obligation
- Memoranda of understanding

Definitions:

Agency contracts database (ACD) means the DSHS information system used for producing, tracking, and monitoring of all DSHS contracts for goods and services (other than purchase orders for operational goods and services addressed by [administrative policy 13.08](#)), client service, IT, data sharing and interlocal agreements.

Central contracts and legal services (CCLS) means the statewide DSHS headquarters contracting office in the facilities, finance, and analytics administration (FFAA).

Central purchasing unit (CPU) means the organizational unit within the facilities, finance, and analytics administration (FFAA) that delegates limited purchasing authority, owns the DSHS TRACKS system, sets policy and procedures, manages competitive procurements, and provides consultation to DSHS HQ, administrations and consolidated business services (CBS) regarding the purchase of operational goods and services.

Client service contract means a contract for services provided directly to DSHS clients, including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing. (See [RCW 39.26.010\[4\]](#)).

Datashare agreement means any agreement between the department and one or more external entities for the sharing and safeguarding of electronic data. Datashare agreement does not mean an agreement to lease or purchase computers or other IT equipment.

Deliverables and **outputs** mean measurable or tangible units of service or of a product that must be completed or delivered.

Exempt means a contract has received a written exemption from this policy signed by the program's division director.

Goods means products, materials, supplies, or equipment provided by a contractor.

Interlocal agreement means a contract or agreement between DSHS and another public agency, political subdivision, or unit of local government including, but not limited to: municipal corporations, quasi-municipal corporations, counties, special purpose districts, and local service districts; any agency of state government; any agency of the United States; any Indian Tribe or Nation recognized as such by the federal government; and any political subdivision of another state. [Chapter 39.34 RCW](#), Interlocal Cooperation Act, governs Interlocal Agreements.

Memorandum of understanding means an agreement that between different administrations or divisions that are entirely within and part of DSHS. Any agreement labeled "memorandum of understanding" that obligates DSHS to payment and would otherwise qualify as an interlocal agreement, a contract for goods or services, or a purchase order is within the scope of this policy regardless of what it is called.

Monitoring means any activity throughout the life of the contract that reviews and evaluates contractor performance and compliance with the terms, conditions, and requirements of a contract.

Outcomes means desired impacts on clients, customers or the public and the results or benefits of the outputs.

Out of scope means a contract is not within the above-stated scope of this policy or the contract does not obligate DSHS to make payments to another entity for goods or services.

Performance-based means that a contract identifies expected deliverables, performance measures or outcomes and makes payment contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences or incentives to ensure that agreed upon value to the state is received.

Performance-based factors means the seven factors listed on the **PB Factors** screen of the ACD and on the [DSHS Performance-Based Contracts Checklist](#).

Performance measure means a quantifiable expression of the amount, cost or result of activities that indicate how well and at what level products and services are provided.

Purchase means the acquisition of goods or services, including the leasing or renting of goods.

Purchase order means a form generated by the TRACKS electronic purchasing module, or other similar system, for the purchase of operational goods or services. A purchase order is a legally binding contract once the vendor has delivered the goods or services.

Renewal means a contract amendment that extends the term of the contract beyond its current end date.

Services means labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work.

TRACKS means the electronic purchasing and inventory system used within DSHS to track agency purchases and monitor fixed asset inventory.

Policy:

All DSHS staff must utilize performance-based contracting principles when entering into contracts, contract renewals, and amendments for all goods and services within the scope of this policy.

Central contracts and legal services (CCLS) is authorized to establish and enforce performance-based contract standards for DSHS.

A. Minimum performance based standards

All contracts and purchase orders that include any service element must meet at least the minimal standard established for performance-based Contracting. A minimally performance-based contract or purchase order must: (1) specify deliverables and (2) make payment contingent upon receipt of those deliverables.

B. Going beyond the minimum to strengthen performance

Before finalizing a contract or purchase order which is only minimally performance-based, staff must determine whether including additional performance-based factors would make the contract or purchase order more strongly performance-based. Staff must consider whether making payment contingent upon the achievement of particular performance measures or outcomes would be appropriate and advisable under the circumstances. Staff must also consider whether they can strategically include consequences for poor performance, incentives for superior performance or other techniques or methods that would help ensure that agreed-upon value to DSHS is received under the contract. (Central purchasing unit (CPU) [Instructions for Purchase Order Performance-Based Contracting Compliance](#) is provided to assist staff in drafting strong deliverables statements.)

C. Exemptions

Where it would not be cost-effective or otherwise feasible to structure a particular contract or purchase order as performance-based, a contract may be exempted from the minimum requirements under this policy by the program's division director. All exemptions must be approved by the division director **prior to final signature of the contract**. Exemptions for purchase orders must be approved by the division director **prior to issuance of the purchase order**.

D. Agency contracts database (ACD)

Performance-based status for all contracts must be entered in the ACD. Each contract must be designated as *performance-based*, *exempt*, or *out of scope* on page two of the ACD's contract detail page. In addition, each contract designated as *performance-based* in the ACD must also include appropriate designation of relevant performance-based factors on the *PB factors* screen of the ACD.

E. Monitoring

1. **Monitoring contracts in the ACD.** Contracts must be monitored in accordance with [administrative policy 13.11](#). In addition, no later than 90 days after completion of the contract, a monitoring record must be created or updated in the ACD to indicate whether the contractor's performance under the contract was *satisfactory* or *unsatisfactory*. *Unsatisfactory* ratings must include comments explaining how the responsible DSHS administration or division sought to mitigate impacts of the unsatisfactory performance.
2. **Monitoring purchase orders.** When using a purchase order to acquire goods or services, DSHS staff must verify receipt of goods or successful performance of services prior to approval for payment.