

# CHAPTER 8F

## GOVERNMENT ACCOUNTABILITY — SERVICE CONTRACTS

[P]

Uniform terms and conditions for service contracts; see §8.47

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### 8F.1 Purpose.

This chapter is intended to create mechanisms to most effectively and efficiently monitor the utilization of public moneys by providing the greatest possible accountability for the expenditure of public moneys.

2006 Acts, ch 1153, §1, 9

### 8F.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Agency” means a unit of state government, which is an authority, board, commission, committee, council, department, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, “agency” does not mean the Iowa public employees’ retirement system created under chapter 97B, the public broadcasting division of the department of education created under section 256.81, the statewide fire and police retirement system created under chapter 411, or an agricultural commodity promotion board subject to a producer referendum.

2. “Compensation” means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an officer, employee, or other person plus the value of benefits including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacations, holidays, and sick leave, severance payments, retirement benefits, and deferred compensation.

3. “Intergovernmental entity” means any separate organization established in accordance with chapter 28E or established by any other agreement between an agency and any other governmental entity, whether federal, state, or local, and any department, division, unit, or subdivision thereof. “Intergovernmental entity” does not include an organization established or agreement made in accordance with chapter 28E between state agencies.

4. “Oversight agency” means an agency that contracts with and disburses state or federal moneys to a recipient entity.

5. “Private agency” means an individual or any form of business organization, including a nonprofit organization, authorized under the laws of this state or any other state or under the laws of any foreign jurisdiction.

6. “Recipient entity” means an intergovernmental entity or a private agency that enters into a service contract with an oversight agency to provide services which will be paid for with local governmental, state, or federal moneys.

7. “Service” or “services” means work performed for an oversight agency or for its client.

8. a. “Service contract” means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision of services. When there is a contract for goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists. “Service contract” includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision of services. For purposes of this chapter, a service contract only exists when an individual service contract or a series of service contracts entered into between an oversight agency and a recipient entity exceeds five hundred thousand dollars or when the grant or contract together with other grants or contracts awarded to the recipient entity by the oversight agency during the oversight agency’s fiscal year exceeds five hundred thousand dollars in the aggregate.

b. “Service contract” does not mean any of the following:

(1) A contract that involves services related to transportation or the construction, reconstruction, improvement, repair, or maintenance of the transportation system.

(2) A contract that is subject to competitive bidding for the construction, reconstruction, improvement, or repair of a public building or public improvement.

(3) A contract concerning an entity that has contracted with the state and is licensed and regulated by the insurance division of the department of commerce.

(4) A contract with a federally insured financial institution that is subject to mandatory periodic examinations by a state or federal regulator.

(5) Any allocation of state or federal moneys by the department of education to subrecipients on a formula or noncompetitive basis.

(6) A contract for vendor services.

(7) A contract for a court-appointed attorney.

(8) A contract for services provided from resources made available under Tit. XVIII, XIX, or XXI of the federal Social Security Act.

(9) A contract with outside counsel or special counsel executed by the executive council pursuant to section 13.3 or 13.7.

(10) A contract concerning the public safety peace officers’ retirement system created under chapter 97A, the judicial retirement system governed by chapter 602, article 9, or the deferred compensation plan established by the executive council pursuant to section 509A.12.

(11) A contract for services provided for the operation, construction, or maintenance of a public or city utility, combined public or city utility, or a city enterprise as defined by section 384.24.

(12) A contract for dual party relay service required by section 477C.3 or for the equipment distribution program established under the authority of section 477C.4.

(13) A contract for services provided by a person subject to regulation under Title XIII of the Code.

9. “Vendor services” means services or goods provided by a vendor that are required for the conduct of a state or federal program for an organization’s own use or for the use of beneficiaries of the state or federal program and which are ancillary to the operation of the state or federal program under a service contract and not otherwise subject to compliance requirements of the state or federal program. For purposes of this subsection, “vendor” means a dealer, distributor, merchant, or other seller which provides goods and services within normal business operations, provides similar goods or services to many different purchasers, and operates in a competitive environment.

2006 Acts, ch 1153, §2, 9; 2006 Acts, ch 1182, §68; 2007 Acts, ch 10, §5; 2008 Acts, ch 1031, §9; 2012 Acts, ch 1023, §2

[T] Subsection 8, paragraph b, subparagraph (8) amended

### 8F.3 Contractual requirements.

1. As a condition of entering into a service contract with an oversight agency, a recipient entity shall certify that the recipient has the following information available for inspection by the oversight agency and the legislative services agency:

a. Information documenting the legal status of the recipient entity, such as agreements establishing the entity pursuant to chapter 28E or other intergovernmental agreements, articles of incorporation, bylaws, or any other information related to the establishment or status of the entity. In addition, the information shall indicate whether the recipient entity is exempt from federal income taxes under section 501(c), of the Internal Revenue Code.

b. Information regarding the training and education received by the members of the governing body of the recipient entity relating to the duties and legal responsibilities of the governing body.

c. Information regarding the procedures used by the governing body of the recipient entity to do all of the following:

(1) Review the performance of management employees and establish the compensation of those employees.

(2) Review the recipient entity's internal controls relating to accounting processes and procedures.

(3) Review the recipient entity's compliance with the laws, rules, regulations, and contractual agreements applicable to its operations.

(4) Information regarding adopted ethical and professional standards of operation for the governing body and employees of the recipient entity and information concerning the implementation of these standards and the training of employees and members of the governing body on the standards. The standards shall include but not be limited to a nepotism policy which shall provide, at a minimum, for disclosure of familial relationships among employees and between employees and members of the governing body, and policies regarding conflicts of interest, standards of responsibility and obedience to law, fairness, and honesty.

d. Information regarding any policies adopted by the governing body of the recipient entity that prohibit taking adverse employment action against employees of the recipient entity who disclose information about a service contract to the oversight agency, the auditor of state, the office of the attorney general, or the office of citizens' aide and that state whether those policies are substantially similar to the protection provided to state employees under section 70A.28. The information provided shall state whether employees of the recipient entity are informed on a regular basis of their rights to disclose information to the oversight agency, the office of citizens' aide, the auditor of state, or the office of the attorney general and the telephone numbers of those organizations.

2. The certification required by this section shall be signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, and shall state that the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

3. Prior to entering into a service contract with a recipient entity, the oversight agency shall determine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract. If the oversight entity is unable to determine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract, the oversight entity shall request such information from the recipient entity as described in subsection 1 to make a determination. If the oversight agency determines from the information provided that the recipient entity cannot reasonably be expected to comply with the requirements of the service contract, the oversight agency shall not enter into the service contract.

2006 Acts, ch 1153, §3, 9; 2007 Acts, ch 22, §113, 116; 2007 Acts, ch 126, §2

Referred to in §8F.4

#### **8F.4 Reporting requirements.**

1. a. As a condition of continuing to receive state or federal moneys through an oversight agency for a service contract, a recipient entity shall file an annual report with the oversight agency and with the legislative services agency within ten months following the end of the recipient entity's fiscal year.

b. However, the annual report shall not be required to be filed under any of the following circumstances:

(1) The recipient entity reports information otherwise required to be included in an annual report described in subsection 2 to the oversight agency pursuant to federal or state statutes or rules. The information otherwise required to be reported to the oversight agency shall be filed with the legislative services agency.

(2) The recipient entity is recognized by the Internal Revenue Code as a nonprofit organization or entity and provides a copy of the internal revenue service form 990 for all fiscal years in which service contract revenues are reported.

2. The annual report required to be filed pursuant to this section shall contain the following:

a. Financial information relative to the expenditure of state and federal moneys for the

prior year pursuant to the service contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

b. Financial information relating to service contracts with the oversight agency during the preceding year, including the costs by category to provide the contracted services.

c. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the recipient entity covering the preceding year.

d. Corrective action taken or planned by the recipient entity in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.

e. Any changes in the information submitted in accordance with section 8F.3.

f. A certification signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

3. A recipient entity shall be required to submit such information as requested by the oversight agency or the legislative services agency relating to the entity's expenditure of state and federal moneys.

2006 Acts, ch 1153, §4, 9

#### **8F.5 Enforcement.**

Any service contract awarded to a recipient entity shall provide that the oversight agency may terminate the service contract if the recipient entity, during the duration of the contract, fails to comply with the requirements of this chapter. In addition, the service contract shall provide a mechanism for the forfeiture and recovery of state or federal funds expended by a recipient entity in violation of the laws applicable to the expenditure of the money or the requirements of the service contract and this chapter.

2006 Acts, ch 1153, §5, 9