

Appendix E – Professional Services Contracting Requirements

Revised April 2016

Preparing a Professional Service Contract (Subcontract) for pre-authorization by Office of Criminal Justice Programs (OCJP)

Professional service contracts must be developed and implemented whenever a subrecipient intends to use grant funds from the professional fees budget line to pay for direct services to clients that the subrecipient's staff will not provide. For example, OCJP requires subrecipients to use professional service contracts for direct services to clients such as counseling services, nursing services, etc. when these services are not provided by subrecipient staff.

Chapter XIII of the [OCJP Administrative Manual](#) has more information about professional service contract requirements.

OCJP grant subrecipient agencies may not enter into a subcontract without obtaining **prior written authorization** from their OCJP Program Manager. Required subcontract language information must be pre-authorized by the OCJP Program Manager *before* an agency may execute the subcontract. This authorization process must occur *before* the start date of the subcontract.

Required Subcontract Information – ALL Subrecipients

Information detailing each of the following items must be present in the subcontract to be considered for pre-authorization:

- Contact Information.** The Contact Person's name, address, and phone number for each party.
- Contract Terms.** Contract Start Date and Contract End Date
NOTE: Subrecipients may draft subcontracts for multi-year service cycles but any changes to that subcontract during the life of the subcontract must be submitted to the agency's OCJP Program Manager for prior authorization.
- Statement of Work / Project Narrative / Scope of Services.** Expressed in clear, concise terms for tasks to be accomplished and should include:
 - a. The specific duties of the professional service contractor should be stated in such a way that he/she knows what is required and to permit the subrecipient to determine that the requirements have been met before making payment;
 - b. The tasks, when accomplished, should produce results consistent with the project objectives;

- c. Sentences should be written so that there is no question as to whether or not the professional services contractor is to be obligated (i.e., “The contractor shall do this work,” not “this work will be required.”);
- d. Persons or committees who will approve reports or specific accomplishments should be specified and part of the contract price should be contingent upon that approval; and
- e. Proper reference documents should be described.

**** Note: Avoid implied requirements and eliminate any material not pertinent to the professional service contract. ****

- Service / Time Records.** The method used to document service/time records. Service/time records should include at a minimum:

- a. Hours and dates worked on the project for each professional service contract position / staff person;
- b. A description of services performed for each professional service contract position / staff person; and
- c. Records of actual supplies used and/or operating expenses incurred that are allowable under the subcontract.

- Contract Termination.** Suitable provisions for termination by the subrecipient, including the manner by which it will be effected and the basis for settlement. Such provisions normally include:

- a. Termination for default in performance
- b. Termination for convenience of subrecipient (e.g., discontinuation of federal funds)

**** Note: If example language is needed to draft this required section, consult the “Standard Terms and Conditions” sections of your OCJP contract. ****

- Payment Terms and Conditions.** A description of compensation and method of payment:

- a. If the subrecipient will pass the grant through to a separate implementing agency, then the professional service contracts must include an annual budget for each year that the subcontract is in effect.
- b. If required, professional service budgets should be submitted using the same budget format required for the particular funding source. Budgets should be descriptive and complete.

- Records Access.** A provision allowing the funding authority (the subrecipient, OCJP, the U.S. Department of Justice, and the Comptroller General of the United States, or any of their duly-authorized representatives) to have access, for purpose of audit and examination, to any records pertinent to the grant upon demand.

- Restriction Regarding Non-Disclosure Agreements related to Confidentiality and Reporting Waste, Fraud, and Abuse.** No recipient under this subcontract or subaward or entity that receives any funds under this agreement, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or

otherwise restricts or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, and abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this subaward or contract, the recipient
 - a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
 - b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.
2. If the recipient does or is authorized to make further subawards or contracts under this subaward,
 - a. it represents that :
 - (1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward, contract, or subcontract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
 - (2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
 - b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

Nonprofit Subrecipient – Required Subcontract Sections:

Instructions: The following sections must be present within the draft subcontract for Nonprofit Subrecipients. There are different instructions versions depending on whether the contracting agency is a non-profit or a governmental entity. The required sections for governmental entity begin on page 3 of this Appendix. These sections are to be copied and incorporated into the subcontract **exactly** as written below, to be considered for pre-authorization:

- Conflicts of Interest.** The Grantee warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.

As per the approved RER, the following section will be included if the Grant Contract involves any state employees.

Notwithstanding the foregoing, the Tennessee Department of Finance and Administration, Office of Criminal Justice Programs may contract with an entity for which a current employee of the State of Tennessee is providing criminal justice or victim service related professional services as an employee or independent contractor outside of his/her hours of state employment, provided that such outside employment does not conflict with applicable law or the state agency's rules, policies or guidelines.

- Lobbying.** The Grantee certifies, to the best of its knowledge and belief, that:
 - a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

[Nondiscrimination OPTION 1 when subcontracting with a nonreligious entity:](#)

- Nondiscrimination.** The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

[Nondiscrimination OPTION 2 when subcontracting with a religious entity:](#)

- Nondiscrimination.** The Grantee agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the basis of any classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- Public Accountability.** If the Grantee is subject to Tenn. Code Ann. § 8-4-401 et seq., or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

- Public Notice.** All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a Grant Contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

- Records.** The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or duly appointed representatives.

The records shall be maintained in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification, Public Company Accounting Oversight Board (PCAOB) Accounting Standards Codification, or Governmental Accounting Standards Board (GASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Audit Requirements, and Cost Principles for Federal Awards*.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- Patents and Copyrights.** OCJP and/or the U.S. Department of Justice shall have irrevocable, nonexclusive royalty-free license to any invention and to reproduce, publish, and use any materials, in whole or in part, and authorize others to do so, which are produced utilizing federal and/or state funds provided under the terms of a subgrant.

[Add the following section only if the subcontracted entity will be collecting personal identifying information on program participants. Personal identifying information includes such information as name, phone numbers, date of birth, address and social security numbers.](#)

- Disclosure of Personal Identity Information.** The Grantee shall report to the State any instances of unauthorized disclosure of personally identifiable information that comes to the Grantee's attention. The Grantee shall make any such report within twenty-four (24) hours after the instance has come to the Grantee's attention. The Grantee, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Grantee shall bear the cost of notification to individuals having personally identifiable information involved in a potential disclosure event, including individual letters or public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to the State under this Grant Contract or otherwise available at law.

[The following section is required for Nonprofit subcontracts for training and evaluations.](#)

- Intellectual Property.** The Grantee agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Grantee shall satisfy and indemnify the State for the amount of any settlement or final judgment, and

the Grantee shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Grantee notice of any such claim or suit and full right and opportunity to conduct the Grantee's own defense thereof, however, the failure of the State to give such notice shall only relieve the Grantee of its obligations under this Section to the extent Grantee can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Grantee, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

Governmental Subrecipient – Required Subcontract Sections:

Instructions: The following sections must be present within the draft subcontract for Local Government Subrecipients. There are different instructions versions depending on whether the contracting agency is a non-profit or a governmental entity. The required sections for non-profit agencies precedes these instructions starting on page 6 of this Appendix. These sections are to be copied and incorporated into the subcontract **exactly** as written below, to be considered for pre-authorization:

- Conflicts of Interest.** The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.

As per the approved RER, the following section will be included if the Grant Contract involves any state employees.

Notwithstanding the foregoing, the Tennessee Department of Finance and Administration, Office of Criminal Justice Programs may contract with an entity for which a current employee of the State of Tennessee is providing criminal justice or victim service related professional services as an employee or independent contractor outside of his/her hours of state employment, provided that such outside employment does not conflict with applicable law or the state agency's rules, policies or guidelines.

- Lobbying.** The Grantee certifies, to the best of its knowledge and belief, that:
 - a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete

and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

Nondiscrimination [OPTION 1](#) when subcontracting with a [nonreligious entity](#):

- Nondiscrimination.** The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Nondiscrimination [OPTION 2](#) when subcontracting with a [religious entity](#):

- Nondiscrimination.** The Grantee agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the basis of any classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- Public Accountability.** If the Grantee is subject to Tenn. Code Ann. § 8-4-401 et seq., or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with all necessary signs.

- Public Notice.** All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this

Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

- **Records.** The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with Tenn. Code Ann. §§ 10-7-404 or 10-7-702, as appropriate. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- **Patents and Copyrights.** OCJP and/or the U.S. Department of Justice shall have irrevocable, nonexclusive royalty-free license to any invention and to reproduce, publish, and use any materials, in whole or in part, and authorize others to do so, which are produced utilizing federal and/or state funds provided under the terms of a subgrant.

[Add the following section only if the subcontracted entity will be collecting personal identifying information on program participants. Personal identifying information includes such information as name, phone numbers, date of birth, address and social security numbers.](#)

- **Disclosure of Personally Identifiable Information.** The Grantee shall report to the State any instances of unauthorized disclosure of personally identifiable information that come to the attention of the Grantee. Any such report shall be made by the Grantee within twenty-four (24) hours after the instance has come to the attention of the Grantee. The Grantee, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Grantee shall bear the cost of notification to individuals having personally identifiable information involved in a potential disclosure event, including individual letters or public notice. The remedies set forth in this section are not exclusive and are in addition to any claims or remedies available to the State under this Grant Contract or otherwise available at law.

Draft subcontracts may be submitted by email to your OCJP Program Manager. Please double check that all required subcontract information is present in the draft subcontract before submission.