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**Division of Aging and Adult Services**  
**Policies, Procedures and Protocols**

**Policy DAAS-Aging 01 Sanctions and Appeals Policy**

**APPLICABILITY AND PURPOSE**

The purpose of this policy is to describe the process that AAA staff will implement in the event that a Contractor is out of compliance with the terms of a contract with AAA and the problem has not been remedied by technical assistance and support offered by AAA staff.

This policy applies to all subcontractors.

**POLICY**

In order to ensure compliance with Federal and State mandates, it is essential that the AAA identify problems and monitor corrections before they become serious enough to disrupt service. Site monitoring is conducted with each Contractor at least once during the fiscal year. If problems are identified, the Contractor is required to submit a plan of correction and a timeline to demonstrate compliance.

AAA staff provides technical assistance and close monitoring during the timeline. If the Contractor still does not come into compliance, AAA will issue an Early Warning Alert and provide assistance as described below. If the Contractor still has materially failed to comply with the terms and conditions of the contract the AAA may impose the following sanctions:

- A. Temporary Withholding of Funds
- B. Suspension of Funds
- C. Termination of Funds

#### Definitions

- Early Warning Alert  
The offering of technical assistance and support by AAA staff to a Contractor whose program is in noncompliance under the terms and condition of their contract.
- Withholding of Funds  
Temporary delay in honoring a Contractor's request for funds.
- Suspension  
A formal action limiting the authority of a program to obligate or expend monies awarded to it under its contract
- Termination  
Withdrawal of authority to expend any funds or conduct any business under the terms and conditions of contracts with the AAA.

#### Clarification

- A. The following are standard operational fiscal actions and are not considered sanctions:
  - 1. Refusal by the AAA to extend a contract
  - 2. Refusal by the AAA to award additional funds
  - 3. Annulment/voiding of a contract upon determination that the award was Obtained fraudulently or was otherwise illegal.
  - 4. Withdrawal of unobligated balance at the expiration of a contract
  - 5. Withdrawal of funds awarded based on the Contractors underestimate of unobligated balance in a prior period.
  
- B. Conditions for which sanctions may be applied but are not limited to:
  - 1. Violations of law
  - 2. Failure to:
    - a. comply with monitoring
    - b. comply with remedial recommendations
    - c. provide AAA with copies of permits for operation of site or facilities
    - d. get prior approval for budget changes
    - e. maintain appropriate insurance
    - f. submit a required report
    - g. comply with AAA regulations

#### **PROCESS**

When sanctions are considered necessary and in the absence of immediate corrective action the following sequence of increasingly severe sanctions may be applied

1. Early Warning Alert
2. Withholding of Funds
3. Suspension of Contract
4. Termination of Contract

In case of threat to life, health, safety of the public or fiscal irregularity the withholding of funds, suspension of contract or termination of contract may take place immediately without implementing the earlier steps.

## **PROCEDURE**

1. Early Warning Alert
  - A. The AAA will:
    1. Offer technical assistance to enable the Contractor to comply with the terms of the contract.
    2. Contractor shall be notified in writing of:
      - a. Specific action must be implemented in order to achieve compliance.
      - b. A deadline date must be given in order for contractor to comply.
    3. Continue to honor requests for funds.
  - B. If the contractor has demonstrated compliance the Early Warning Alert is lifted.
  - C. If compliance has not been achieved withholding of funds shall be implemented.
  
2. Withholding of Funds
  - A. The withhold will be approved by the Aging Program Manager
  - B. The withhold shall be in effect for 10 calendar days.
  - C. The contractor will be notified in the following manner:
    1. By e-mail or fax on the day the withhold goes into effect
    2. By follow-up letter
  - D. Notices shall contain the following information:
    1. Reason Contractor is out of compliance
    2. Actions that must be taken
    3. Notification that any request for funds will not be honored during the specified time period
  - E. The Aging Program Manager will meet with director during the withholding period to decide if a Suspension of Contract will be imposed if compliance is not achieved.
  - F. A withhold will be lifted when the Contractor has demonstrated that  
  
compliance has been achieved.

- G. After the withhold has been lifted, any outstanding requests for funds shall be paid
- H. If compliance has not been achieved Suspension of Contract will be implemented.

### 3. Suspension of Contract

- A. The Division Director will notify the Contractor and Chairman of their Governing Board of the intent to suspend the contract.
- B. The suspension will go into effect 10 calendar days after the notice has been mailed.
- C. The notice shall specify the following:
  - 1. The reason for the action
  - 2. The corrective action required
  - 3. The right to appeal the suspension
  - 4. The hearing process.
  - 5. Allowable costs and expenditures
    - a. Necessary costs which the Contractor could not reasonably avoid during the suspension period resulting from:
      - 1. obligations incurred before the suspension
      - 2. obligations not in anticipation of the suspension
      - 3. obligations allowed in satisfaction of cost sharing or matching requirements
    - b. Non-allowable costs and expenditures
      - 1. new obligations incurred during the suspension
      - 2. salaries, wages, personnel expenditures
      - 3. expenditures made in anticipation of the suspension.
- D. If the Contractor has demonstrated compliance:
  - 1. The suspension will be lifted.
  - 2. The Contractor and Chairperson of their Governing Board will be notified
  - 3. Requests for funds will be honored.
- E. Termination of Contract will be implemented if:
  - 1. Contractor has not demonstrated that compliance has been achieved for three consecutive months.
  - 2. There is clear evidence of fraud or malfeasance
  - 3. The failure to comply is deemed flagrant and deliberate

### 4. 4. Termination of Contract

- A. The Division Director will notify the Contractor and Chairperson of their Governing Board
- B. The Contractor shall be given ten days written notice prior to the beginning of the termination process.

- C. The Notice of Intent to Terminate will contain:
    - 1. The reasons for Termination.
    - 2. Instructions regarding the transition pro
      - a. transfer or Disposal of Records
      - b. preservation of equipment and supplies
    - 3. Information regarding the hearing process
  - D. Outstanding requests for funds shall:
    - 1. Not be allowed until the project has been closed out.
    - 2. Only allowable unavoidable costs will be paid
    - 3. Payments to be made only be funds still remaining in the contract.
  - E. The decision to terminate the contract will be made by the Marin County Board of Supervisors (BOS)
    - 1. The Board process to terminate will begin on the 11<sup>th</sup> calendar day following the notice of intent to terminate.
5. Hearing and Appeal Process:
- A. Requests for Hearings on Suspension of Funds
    - 1. Within ten working days of receipt Contractors may:
      - a. request a hearing in writing
      - b. address the request to the Division Director
      - c. request must detail the disagreement or protest
    - 2. Within five working days the Division Director will:
      - a. Decide to hear the protest
        - 1. Send written notice to Contractor setting a date, time & place
        - 2. Director or designee in conjunction with the Planning Committee of the Commission on Aging will hear the protest.
        - 3. Division Director will notify the Contractor within 10 working days following the hearing.
      - b. Decide not to hear the protest
        - 1. Send written denial of hearing stating the reason for the denial.
  - B. Requests for Hearings on Termination
    - 1. A preliminary hearing may be requested as detailed above
    - 2. Division Director will send decision in writing to both the Contractor and Board of Supervisors within ten working days following the hearing.
    - 3. Contractor may request a hearing in front of the Board of Supervisors.
    - 4. Request for BOS hearing should:
      - a. State reason for appeal
      - b. Provide evidence to refute the action
    - 5. The Board of Supervisors will decide:
      - a. If the protest will be heard
      - b. Set the date, place and time of the hearing
      - c. Notify the contractor in writing of the results.

- C. California Department of Aging Review of Records
  - 1. Contractor may request a review within 30 calendar days of the BOS decision.

**FORMS AND OTHER ATTACHMENTS:** Pending

**REFERENCES:** Title 22 Division 1.8 Chapter 3 Article 6

Date Finalized: October 7, 2011