

§ 143B-139.3A. Contracts with nonprofit grantees.

(a) Contract Time and Continuity. –

- (1) [Minimum Term. –] In efforts to support the continuity of services provided by a nonprofit grantee receiving State or federal funds or any combination of State and federal funds through a financial assistance contract, the Department of Health and Human Services (Department) shall enter into a contract agreement for a minimum of two years with such nonprofit grantee if the following requirements are met:
 - a. The nonprofit grantee is receiving nonrecurring funds for each year of a fiscal biennium.
 - b. The nonprofit grantee is receiving recurring funds for each year of a fiscal biennium.
 - b1. The nonprofit grantee is receiving any combination of recurring and nonrecurring funds for each year of a fiscal biennium.
 - c. Multiyear contracts are not otherwise prohibited by the funding source.
- (2) Option for Contract Extension. – A nonprofit grantee receiving recurring federal grant funds through a financial assistance contract has the option to extend the contract for up to one additional year at the end of the initial term of the contract if all of the following requirements are met:
 - a. The extension is mutually agreed upon by the Department and the nonprofit grantee, through a written amendment as provided for in the terms and conditions of the contract.
 - b. Funding for the contract remains available.
- (3) Automatic Contract Extension. – The Department shall allow any nonprofit grantee receiving recurring or nonrecurring State or federal funds, or any combination of State and federal funds, through a financial assistance contract for each year of a fiscal biennium to automatically activate a limited-time contract extension for a period of up to three months to preserve continuity of services when a formal contract extension or renewal process has not been completed within 10 business days after the expiration of the original contract; provided, however, that all of the following requirements are met:
 - a. The nonprofit grantee is receiving recurring funds, or nonrecurring State or federal funds, or any combination of nonrecurring State and federal funds, for each year of a fiscal biennium.
 - b. The nonprofit grantee has received an unqualified audit report on its most recent financial audit when an audit is required by G.S. 159-34 or 09 NCAC 03M.
 - c. The nonprofit grantee has a track record of timely performance and financial reporting to the Department as required by the contract.
 - d. The nonprofit grantee has not been identified by the Department as having a record of noncompliance with requirements of any funding source used to support the contract and has not received an undisputed notice of such noncompliance from the Department. For purposes of this requirement, noncompliance does not include issues stemming from late execution of a contract or mutually agreed upon changes to scope of work or deliverables, and undisputed notice of noncompliance does not include notice of noncompliance where the nonprofit grantee has provided written evidence of actual compliance

to the Department within 30 days after receipt of a notice of noncompliance.

e. The nonprofit grantee has been in operation for at least five years.

In the event of an automatic contract extension pursuant to this subsection, the terms of the expired contract shall govern the relationship and obligations of the party until the end of the three-month contract extension period or until the execution of a formal contract extension or renewal, whichever occurs first.

(b) Negotiated Overhead Rates. – The negotiation, determination, or settlement of the reimbursable amount of overhead under cost-reimbursement type contracts is accomplished on an individual contract basis and is based upon the federally approved indirect cost rate. For grantees, including nonprofit grantees, that (i) are receiving financial assistance and do not have a federally approved indirect cost rate from a federal agency or (ii) have a previously negotiated but expired rate, the Department may allow the grantee, in accordance with 2 C.F.R. § 200.332(a)(4) or 2 C.F.R. § 200.414(f), to use the de minimis rate or ten percent (10%) of modified total direct costs. Alternatively, the grantee may negotiate or waive an indirect cost rate with the Department. If State or federal law or regulations establish a limitation on the amount of funds the grantee may use for administrative purposes, then that limitation controls, in accordance with 2 C.F.R. § 200.414(c)(3). (2022-52, s. 2(a), (c); 2023-65, s. 2.1.)