

**Child and Youth Services (CYS) Contract Templates\*: Summary of April 21, 2016 Discussion (ALIGN and Human Services) and Recommendations**

Issue	ALIGN Comments	Human Services Comments	Template Revisions
<p>CYS Block &amp; Fixed Price: Language in new templates reads as directive and intrusive, and may suggest a shift towards an employee-employer relationship between the Contractor and the Province.</p>	<p>New template contradicts spirit of trust and collaboration, micro-manages the contractor, and adds an undue degree of control.</p>	<p>New templates include common provisions to ensure Government is accountable for the provision of services and use of funding under the contract. Government must also retain the ability to act in exceptional circumstances when the safety and well-being of clients may be at risk.</p> <p>Suggest revising provisions, where appropriate, to reflect mutual relationship and joint responsibility of parties. Also transfer stand-alone termination provisions into a single section where possible.</p>	<p>Revised Articles 3.1 (added 'reasonable'), 3.2 (removed termination reference), 3.6 (removed 2<sup>nd</sup> portion), 4.2 (added 'and Contractor'), 5.2a (added 'reasonable'). Transferred Articles 3.2 (and removed reference to location change) and, 5.3 into new Article 19.5.</p>
<p>CYS Block: Definition of surplus (Definition aa) suggests surplus is determined prior to/outside of an audit.</p>	<p>Definition suggests more frequent reporting and return of surplus, limiting agencies' flexibility to re-allocate and/or utilize surplus funding.</p>	<p>The process for managing surplus is unchanged; any excess funds would be identified through regular financial reporting with agreement of all parties. Ability to negotiate re-allocation of excess funds in-year is unchanged. Any surplus generated through the term could be reduced through reallocation; following this, any remaining surplus would be returned at the end of the term.</p>	<p>No change to template.</p> <p>Take steps to ensure clarity and consistency of process and practice across regions.</p>
<p>CYS Fixed Price: References to surplus, including Definition (x), suggests that surplus may exist, which is contrary to fixed price arrangements.</p>	<p>Suggests potential for surplus to be accrued, which is contrary to fixed price arrangements and past practice.</p>	<p>The addition of the notion of surplus was added for instances where Contractors may have been provided advance/pre- payments for services. Since the new model will be no advance payments but rather payment for invoiced services, the concept of surplus can be removed from the CYS Fixed Price template.</p>	<p>Removed all reference to surplus, including Definition (x) and Articles 6.3, 19.2(c) and 23.1(b).</p>
<p>CYS Block &amp; Fixed Price: Article 3.4 suggests the Province can dictate who the Contractor accepts or removes as clients.</p>	<p>This suggests Province can unilaterally make decisions about admitting or removing clients, which may not take into account scope of services, expertise/ability of Contractor to provide services, or best interests of the client.</p>	<p>Intention is for Province and Contractor to jointly make decisions to ensure appropriate and timely placements of clients requiring services.</p> <p>Suggest revising Article to clarify joint decision-making and emphasize that decisions will be made in the context of the particular scope of services as described in Schedule A.</p>	<p>Revised Article 3.4: 'The Contractor may admit or remove any Client at the request of the Province <u>in consultation with the Contractor as per Schedule A.</u>'</p> <p>Take steps to ensure clarity and consistency of process and practice across regions.</p>

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CYS Block & Fixed Price: Article 3.5, requirement for all employees to complete intervention and criminal record checks prior to employment, is not practically feasible in all cases.	The requirement to provide checks prior to commencement may not be practical as timelines are outside of agencies' control. In addition, current provision suggests requirement applies to all staff, subcontractors and volunteers.	Maintain requirement for intervention and criminal record checks but limit to individuals who provide direct client services or supports, and remove requirement that it be completed prior to commencement.	Revised Article 3.5 to clarify that it applies only to individuals who provide direct services to clients, and removed initial timing requirement.
CYS Block & Fixed Price: Article 5.1 and 5.2 suggest Province has broad authority to request reviews, audits, records and access related to any and all Contractor programs and services.	As worded, this suggests Province can require Contractor to undertake activities, provide information and implement subsequent recommendations that may not be directly related to services as defined in the Services Agreement.	Process and intention is unchanged: the Province must retain the ability to request additional reviews, audits, records and access; however, this is limited to those activities or information that are within scope of the contracted services.  Suggest adding further clarity to these provisions to ensure the scope of any such request is in relation to the Services provided.	Revised Articles 5.1 and 5.2 to clarify that it applies only to activities or information that are directly in relation to the Services outlined in the contract.  Take steps to ensure clarity and consistency of process and practice across regions.
CYS Block: Article 6.4 suggests the Province may require repayment of any identified surplus at any time during the term of the agreement.	As worded, this suggests that any flexibility for Contractors to re-allocate excess funds to other categories in-year is removed, and that any surpluses identified at any time during a contract term must be returned to the Province. This significantly impacts Contractor's ability to manage day-to-day service provision, and negatively affects their ongoing viability.	New provision ensures that surplus treatment is aligned with Government of Alberta standards and compliant with <i>Financial Accountability Act</i> . Intention is that the Contractor will retain ability to re-allocate excess funds in-year, and that the Province and Contractor will engage in regular dialogue to ensure surplus is reduced and services are optimally provided.  Suggest revising Article to clarify above intent.	Revised Article 6.4 to create a fixed minimum schedule for repaying surplus: ' <u>If, annually during the Term</u> or within one year after this Contract ends or terminates, the Province determines that a Surplus exists, the contractor shall within 30 days of the Province's demand, repay part or the entire Surplus, as the Province directs.'  Take steps to ensure clarity and consistency of process and practice across regions.

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CYS Block: Article 6.6 suggests that the Province may consider as surplus any monies received via revenue streams from third parties, such as fundraising.	As worded, this suggests that monies raised through fundraising and other revenue generating activities may be defined as a surplus and have to be paid by the Contractor to the Province.	Intention is that only revenues and expenditures against categories directly funded by the Province will be used to determine surplus. Monies raised through fundraising and other revenue streams to support other agency budget categories will not be included in the surplus calculation.  Suggest revising Schedule B to clarify above intent.	Revise Schedule B to clearly differentiate between revenue sources against overall agency budgets and the Province’s funding for services.  Take steps to ensure clarity and consistency of process and practice across regions.
CYS Block and Fixed Price: Article 7.3 suggests that the Province can dictate the maximum cost payable for a requested audit.	As worded, this suggests that the Contractor will bear any cost beyond the maximum stipulated by the Province for an audit requested by the Province.	Intention is that the Province will cover reasonable costs associated with an audit requested by the Province, and that a maximum cost will be determined jointly in discussions with the Contractor. If the maximum is exceeded, any further increase will be negotiated between the Province and the Contractor.  Suggest revising Article to clarify above intent.	Revised Article 7.3: ‘At the Province’s request, the Contractor shall provide an independently audited financial statement or Auditor’s Report at any time during the Term, and the Province agrees to pay the costs of the requested audit <u>up to the maximum agreed upon by the Province and the Contractor</u> ’.
CYS Block and Fixed Price: Article 7.5 suggests that this requirement pertains to financial records.	By virtue of its placement in Section 7, this requirement to preserve Records can be wrongly interpreted as pertaining to only records of a financial nature.	Intention is to preserve the ability of the Province to ask the Contractor to preserve Records beyond terms stated, in the event of an external review or audit or potential litigation.  Suggest removing this Article from Section 7 and placing in Section 8 so that it is not interpreted as being directly tied to financial records.	Removes Article 7.5 and moves to Section 8 as new Article 8.4 (wording unchanged).

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<p>CYS Block and Fixed Price: Article 10, dealing with personnel replacement, is seen as overly intrusive and suggestive of an employee-employer relationship between the Contractor and the Province.</p>	<p>New personnel replacement provisions are seen as impractical, overly intrusive and suggesting an undue degree of control in operational matters.</p>	<p>Intention is to define a mechanism and joint responsibility for the Province and the Contractor to identify, where applicable, exceptional circumstances where an individual or position with highly specialized skills/experience is required to meet the unique needs of a client, and to identify this individual or position in Schedule A.</p> <p>Suggest revising Article 10.1 to clarify above intent and removing Article 10.2.</p>	<p>Revised Article 10.: 'If an employee, subcontractor, agent or position is <u>jointly</u> identified by the Contractor and Province in Schedule A <u>as having specialized skills or experience essential to meet the unique needs of a Client</u>, that employee, subcontractor, agent or position <u>should</u> not be replaced without the prior written approval of the Province, which approval shall not be unreasonably withheld.'</p> <p>Removed Article 10.2.</p>
<p>CYS Block and Fixed Price: Article 13.6, prohibiting public commentary relating to the contract, is perceived as a 'gag clause' impacting Contractors' ability to advocate for clients.</p>	<p>New provision is perceived as a 'gag order' and will impact the ability of a Contractor to advocate on behalf of its clients.</p>	<p>Intention is not to restrict the ability of a Contractor to advocate on behalf of its clients. Article 13.6 relates to the specifics of the contract, and is intended to augment the protection of clients' individual privacy.</p> <p>Suggest removing Article 13.6.</p>	<p>Removed Article 13.6.</p>

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