



CREATING EFFECTIVE AGREEMENTS, PARTNERSHIPS AND COLLABORATIONS

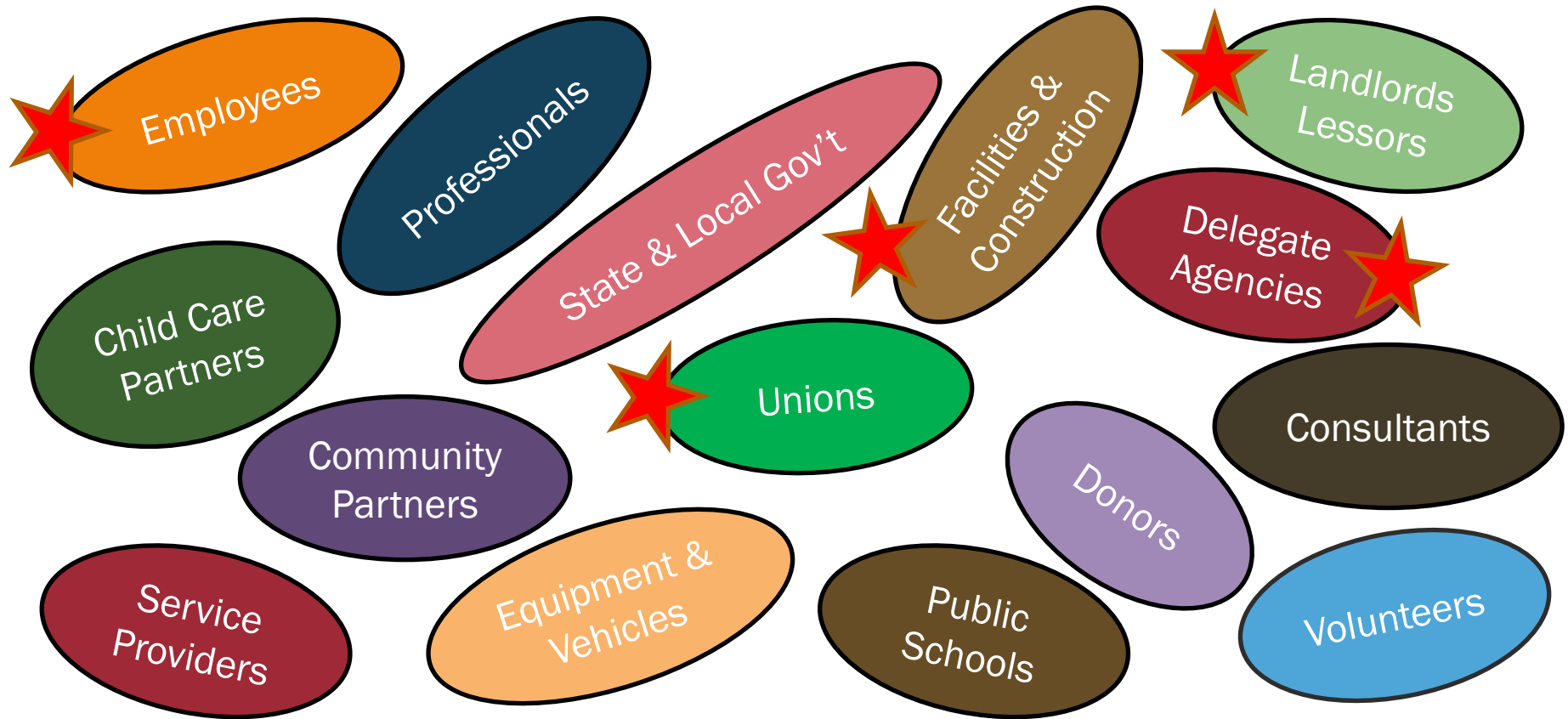
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SESSION OUTCOMES

- ❑ **As a result of attending today's session, you will:**
 - ✓ Understand how to plan for effective contracts, agreements, partnerships and collaborations (collectively referred to as agreements).
 - ✓ Know when to seek the advice of a competent attorney and how to maximize value and minimize costs for attorney services.
 - ✓ Be aware of standard terms and conditions that should be included in all agreements.
 - ✓ Recognize special circumstances that should be addressed in various types of agreements.
 - ✓ Know what to be cautious of when presented with an agreement another party has drafted.
 - ✓ Be prepared for review of agreements during onsite monitoring and annual audits.

AGREEMENTS IN HEAD START & EARLY HEAD START



EARLY CHILDHOOD & KNOWLEDGE CENTER (ECLKC)

OFFICE OF HEAD START NATIONAL CENTERS
THE NATIONAL CENTER ON Program Management and Fiscal Operations

Strategic Use of Consultants

An Interactive Guide for Head Start and Early Head Start Leaders

This interactive guide is designed to help Head Start and Early Head Start (EHS) leaders better utilize consultants to bring lasting change and quality improvement to their programs.

Activity 1
Setting the Context

Activity 2
Trying a Fresh Approach

Activity 3
Choosing the Right Person

Activity 4
Creating Strong Contracts

Resources
Voices from the Field

Resources
Tool Box

Resources
Impacting Change across Program Areas

PMFO


EARLY CHILDHOOD & KNOWLEDGE CENTER (ECLKC)

Checklist for Developing a Partnership Agreement/Contract

Partnerships between early education providers need critical elements and information for smooth, strong, and sustainable collaborations. Early education partners may use this checklist to define and review roles and responsibilities of their contractual agreements.

Early education partners can use this checklist to assist them in developing a comprehensive agreement that clearly addresses each partner's roles and responsibilities and many of the elements needed for the partnership to run smoothly. While agreements can and should be reviewed and revised over time, a strong agreement forged early in the partnership lays the foundation for a strong and sustainable collaboration.

A partnership agreement between early education providers contains critical information and clarifying details. Agreements include some standard legal sections, but the language used often sets the tone for a "partnership spirit." To support the type of information that is included in an agreement, the QUILT project provided a list of specifics that partners might include in a written agreement, although not every item need be addressed.

Agreements vary, reflecting the uniqueness of the partnership. Early education providers can use this document as they develop or review their partnership agreements. [Full text»](#)  [PDF, 483KB]




EARLY CHILDHOOD & KNOWLEDGE CENTER (ECLKC)

Contracts



[Advertising for Professionals](#)

[Overview of Selecting Contractors and Subcontractors](#)

[Tip Sheet on Working with Architects](#) 

[Contract Performance: Overseeing the Project](#)

[Construction Administration](#)

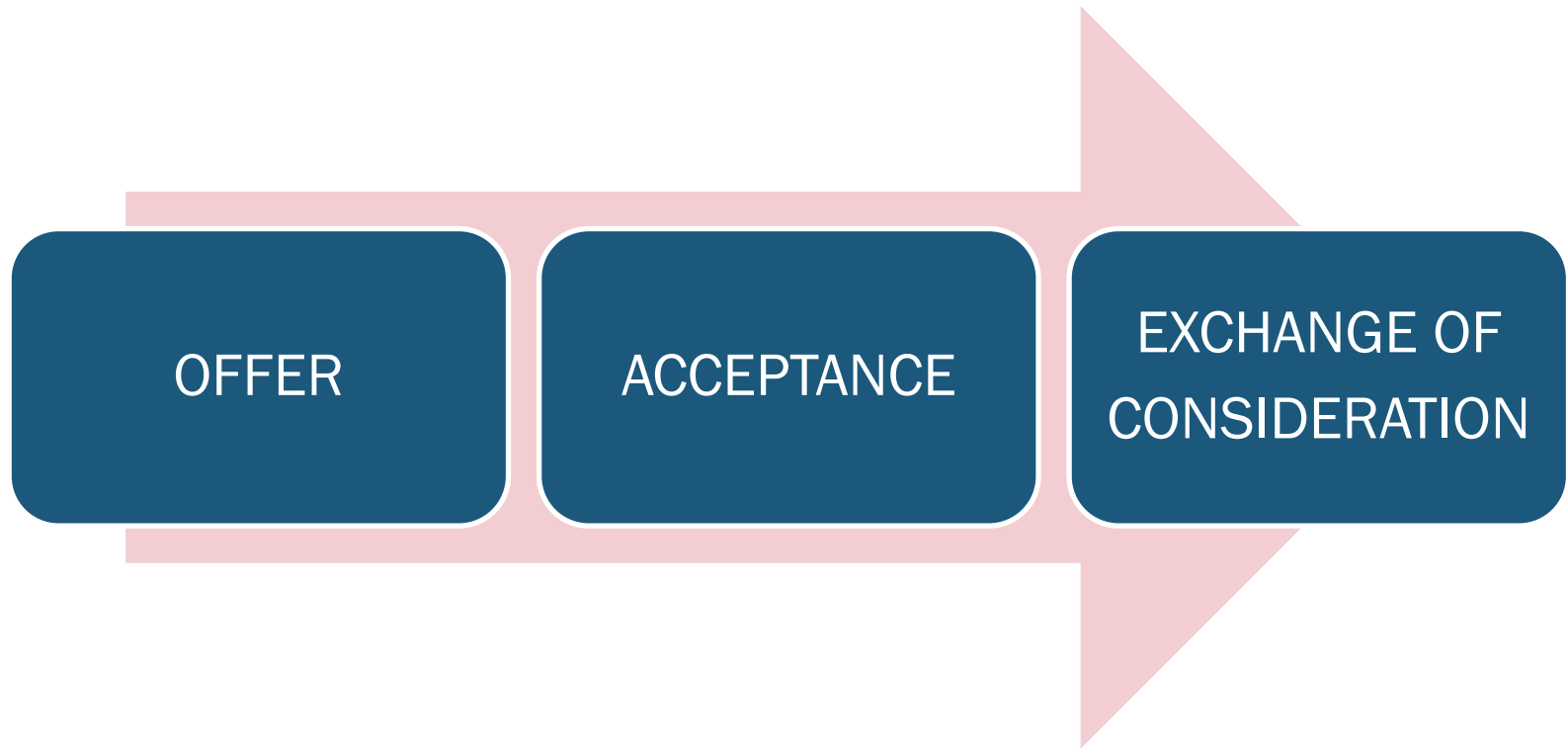
[Facilities File Checklist](#)

[45 CFR Section 1309.21 Recording of Federal Interest and Other Protection of Federal Interest](#)

ELEMENTS OF AN EFFECTIVE AGREEMENT



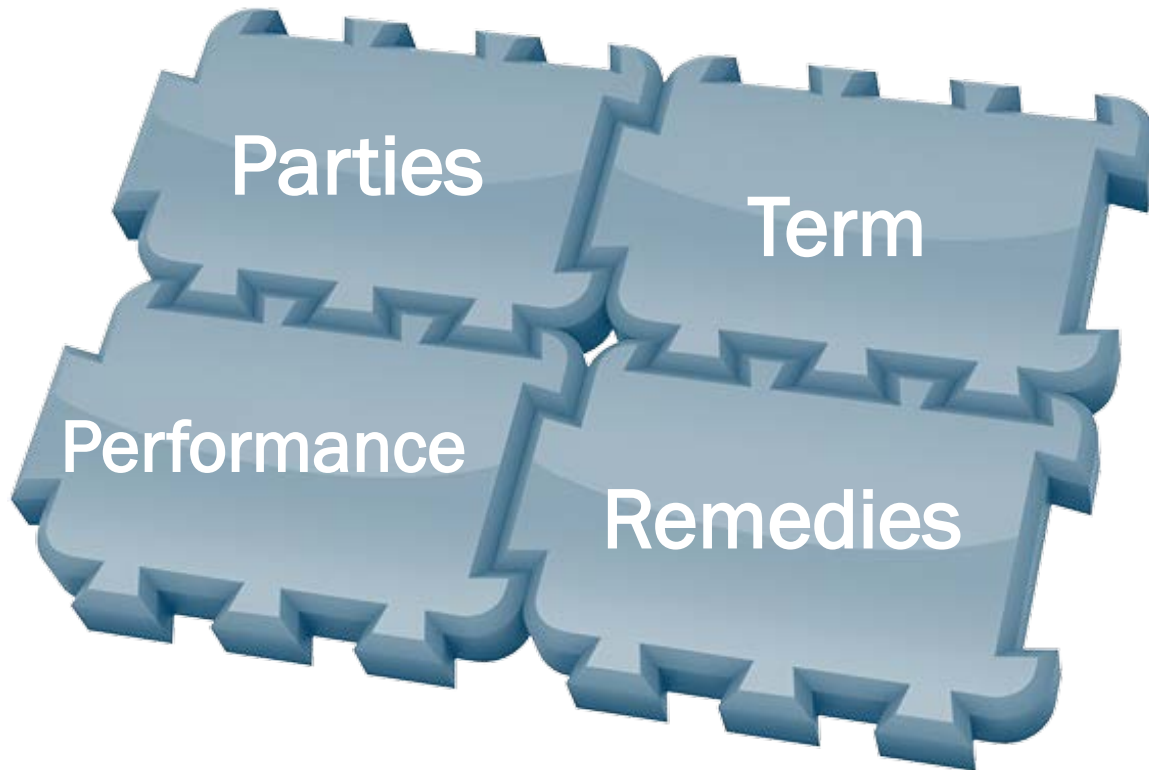
LEGAL EXISTENCE OF AN AGREEMENT



GRANTS MANAGEMENT REQUIREMENTS

- ❑ A **system for contract administration** shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract. 45 CFR 74.47 and 92.20(b)(6).
- ❑ The recipient shall include, in addition to provisions to **define a sound and complete agreement**, the following provisions in all contracts. The following provisions shall also be applied to subcontracts. 45 CFR 74.48 and 92.20(b)(6).
- ❑ Interpreted to mean: **current, signed and dated**.

ELEMENTS OF AN AGREEMENT



Additional Elements

- Title
- Underlying Premises
- Notice
- Miscellaneous

THE PARTIES TO THE AGREEMENT

The parties to this child care partnership agreement are ABC, Inc. and the Child Learning Center, who agree as follows...

- ✓ Party names should be full legal names, not abbreviations or doing business names
- ✓ Type and state of formation of legal entity should be specified in the agreement
- ✓ Identify any short references to be used in the agreement
- ✓ Once identified, make consistent use of short references

The parties to this child care partnership agreement are All Because of Children, Inc. , an Oregon nonprofit corporation (referred to as “ABC” or “Grantee”) and Learning Center Corporation, an Oregon for profit corporation doing business as the Child Learning Center (referred to as “CLC” or “Provider”). ABC and CLC agree as follows....

THE TERM OF THE AGREEMENT

The term of this lease agreement shall be for two years and at the end of the initial term this lease will continue until terminated by either party.

- ✓ Carefully consider the term of every agreement
- ✓ Be sure to specify the start date of the agreement, don't rely on signature dates
- ✓ Be careful of automatic renewal language, especially for extended terms
- ✓ Calendar termination dates well in advance to manage required notices

The term of this lease agreement shall be for two (2) years, beginning January 1, 2014 through December 31, 2015. This lease agreement shall automatically renew on the same terms and conditions for additional one (1) year terms unless this lease agreement is terminated by either party, in writing, at least thirty (30) days prior to the end of the then-current lease term. No cause is required in connection with termination exercised as set forth in this paragraph.

PERFORMANCE OF THE AGREEMENT

Sally Jones, Ph.D. agrees to provide one thousand forty (1,040) hours of mental health consulting services at the request of Grantee. ~~Services will be provided for children participating in the Head Start, Early Head Start and Incarcerated Parents programs.~~ Payment for services will be two hundred fifty dollars (\$250.00) per hour.

- ✓ Performance requirements are the meat of any agreement
- ✓ Provide complete details regarding both performance and payment
- ✓ Be aware of procurement and cost principle application
- ✓ Recognize simplified acquisition threshold contract issues (>\$150,000)
- ✓ Consider cost allocation issues

Sally Jones, Ph.D. agrees to provide up to one thousand forty (1,040) hours of at least fifty (50) minutes per hour of mental health services as described in attached Exhibit A, incorporated by reference. Grantee will request services in writing with a brief explanation of the concern or issue to be addressed... Dr. Jones will provide services by the end of the next business week...and shall provide a report of services provided with attached child identifier by the 10th day of the following month. Grantee will pay all amounts determined to be in compliance with cost principles by the final day of the following month... Any disputed amounts...

REMEDIES FOR BREACH OF THE AGREEMENT

In the event that either party is dissatisfied with the performance of the other party this agreement may be terminated.

- ✓ Define what constitutes breach of the agreement
- ✓ Always consider need for access to program and fiscal documentation
- ✓ Identify what responsibilities survive the agreement's termination, return of child files, etc.
- ✓ Consider different treatment of program, fiscal and emergency noncompliance
- ✓ Address what constitutes cure of noncompliance and who decides if cure has occurred

In the event that either party believes that the other party is not in compliance any of the terms and conditions of this agreement written notice describing the nature of the noncompliance shall be given to.... Upon receipt of written notice, the noncompliant party shall have thirty (30) days to cure the noncompliance.... The parties shall have reasonable access to the program and financial records of the other party, to the extent needed to determine if compliance has, in fact, occurred. Reasonable access is defined as....

ADDITIONAL AGREEMENT ELEMENTS

❑ Title

- The title of the agreement should reflect the nature and purpose of the agreement.

❑ Underlying Premises

- These are the statements of shared underlying goals and objectives that provide context for the agreement. They are often stated as an introduction to the substantive terms of the agreement, sometimes called the “Whereas” statements, and are generally not an enforceable part of the agreement.

❑ Notice

- It is important to designate how notice is given, to whom, by what method and when delivery will be presumed. Special notice provisions may be required by applicable regulations, such as 45 CFR Part 1309.

❑ Miscellaneous

- These provisions cover areas applicable to most agreements, including severability, choice of applicable law, correction of errors, assignability, etc.


THINGS TO THINK ABOUT
FOR HEAD START AND
EARLY HEAD START PROGRAMS



DELEGATE AGENCY AGREEMENTS

- ❑ Defined in 45 CFR 1302.3, must be in writing
- ❑ See notice and appeals rights in 45 CFR 1303.20 – 1303.23
- ❑ See also governing body responsibilities in 45 CFR 1304.50(g)
- ❑ Adding or removing a delegate is a change in scope requiring Regional approval, including submission of delegate agency agreement for review
- ❑ Make sure that performance requirements (program) are fully described and adequately funded
- ❑ Consider fiscal issues such as annual audit, access to records, inventories
- ❑ Address cash management issues and minimizing time between draw-down and expenditure
- ❑ Determine when notice must be given to the grantee, including emergent and ongoing program issues and fiscal reports
- ❑ A delegate agency agreement does not relieve the grantee of compliance responsibility

CHILD CARE PARTNERSHIP AGREEMENTS

- Utilize existing [guidance on ECLKC](#) described in Slide 5
 - Make sure all applicable program performance requirements are addressed
 - Include other requirements such as licensing, insurance, indoor air quality, pets, etc.
 - Consider how program goals and objectives are incorporated in the agreement
 - Make sure that quality of care requirements (program) are fully described and adequately funded
 - Establish monitoring procedures and assure provider compliance
 - Determine when notice must be given to the grantee, including emergent and ongoing program issues
 - Address how billing for services will be submitted and when bills will be paid
 - Consider cost allocation issues and any needed reports or documentation
 - The grantee remains responsible for program and fiscal compliance, liability is not shifted to the child care partner
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CONSTRUCTION > \$2,000

- ❑ Construction and renovation projects and subcontracts financed with funds awarded under the Head Start program are subject to the [Davis-Bacon Act](#) and the Regulations of the Department of Labor.
- ❑ All contracts entered into by any Head Start program which are in excess of \$2,000 and are for the construction, renovation or repair of buildings used by Head Start programs, are subject to the requirements of the Davis-Bacon Act. [See ACYF-IM-HS-95-04.](#)
- ❑ All laborers and mechanics employed by contractors or subcontractors in the construction or renovation of affected Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.
- ❑ **From the monitoring protocol:** Does the construction, renovation, or repair contracts for a Head Start facility in excess of \$2,000 include Davis-Bacon Act language requiring that all laborers and mechanics employed by contractors or subcontractors be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor?

FACILITIES ACTIVITIES PER 45 CFR PART 1309

- ❑ For extensive facilities and lease information, see the slides from the Facilities presentation earlier in the conference, which will be posted on the Washington State Head Start Association website following this conference
- ❑ Utilize the [information provided on ECLKC](#) and referenced on Slide 6
- ❑ Pay careful attention to timelines in professional contracts
- ❑ Consider a separate agreement with an early childhood building professional
- ❑ Certain mortgage provisions are required by 45 CFR 1309.22
- ❑ Special lease provisions are required by 45 CFR 1309.21 for major renovations on leased or third party property
- ❑ Subordination agreements must be signed by an ACF official and contain required terms
- ❑ A notice of Federal interest must be filed in the appropriate public land records

SIMPLIFIED ACQUISITION THRESHOLD > \$150,000

- Bid guarantee, performance bond, payment bond requirements must be included
- Provide for access to books, documents, papers and records
- Include applicable procurement provisions
- Davis-Bacon Act requirements, if applicable
- Include adequate monitoring and reporting provisions
- From the monitoring protocol:** Do contracts in excess of \$150,000 include contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms and provide for such remedial actions as may be appropriate and include suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement (92.36(i)(1 and 2), 74.48(a and b))?


LEASES

- ❑ Leases are an important part of service availability for most grantees
- ❑ Consider carefully what length of term best fits program needs
- ❑ If rental below fair market value is provided, intent to make a donation or contribution must be clear, usually in the agreement
- ❑ Fair rental value must be established by a real estate appraiser (not a real estate agent, broker or leasing professional)
- ❑ Most states require leases in excess of one year to be in writing
- ❑ Special provisions apply to leased property subject to major renovations
- ❑ Considerations and cautions:
 - Pre-printed standard leases may not fit program needs
 - Charges under “triple net” leases may not be allowable
 - Grantee can only charge depreciation or use allowance for capital leases and related party leases

EMPLOYMENT AGREEMENTS

- ❑ Employment agreements are a complex area of the law and involvement of an attorney in drafting and reviewing employment agreements is highly advised.
- ❑ Employment agreements may include:
 - Terms and conditions of the employment relationship
 - Description of job duties
 - Performance expectations, corrective action, termination
 - Diversity and legal compliance requirements
 - Bonus and incentive compensation policies
 - Separation from employment agreements
 - Agreements for settlement of employment claims against the agency
- ❑ Collective bargaining agreement are a specialized form of employment agreement which result from the bargaining process in programs where non-managerial staff are unionized.


SHARED GOODS AND SERVICES

- Cost principles require that all cost are allocable to (benefit) the award to which they are charged
 - A shared or dual benefit cost is one which benefits both the award and other work and can be distributed in reasonable proportion to the benefits received
 - Contracts for shared goods and services should anticipate cost allocation needs
 - Consider agreement language to track child services by grant award without compromising confidentiality
 - Especially for professional services, consider program reporting and feedback needs for child, family and program planning
 - Billing and invoicing procedures should be consistent with cost allocation needs
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PULLING IT ALL TOGETHER



SUMMARY

- ❖ Think carefully about your goals, objectives and limitations before entering into an agreement
 - ❖ Most complex agreements should be drafted or reviewed by an attorney familiar with the type of agreement needed
 - ❖ Remember, attorneys are often not familiar with early childhood programs or the Head Start Performance Standards (cannot pay your Governing Body attorney)
 - ❖ The better prepared you are for your visit with the attorney, the better and more cost effective agreement preparation will be
 - ❖ Include all required elements, parties, term, performance and remedies and any additional elements needed
 - ❖ Be sure all statutory requirements are met and all mandatory language is included
 - ❖ Use a contract management system to ensure that all contracts are current, signed and dated
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QUESTIONS AND COMMENTS



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