

COVID-19: “Hold Harmless” DIRECTIVE
Frequently Asked Questions (FAQ)
Revised June 2, 2020

Purpose: The purpose of the COVID-19 “Hold Harmless” Directive FAQ is to provide guidance and clarity to stakeholders, HSD staff, and service providers for how the directive effects contract agreements, amendments, new base calculations, and payments.

Question 1: What contracts are affected by the “Hold Harmless” directive?

The directive affects all active general fund contracts.

Question 2: What are the “Hold Harmless” directive effective dates?

The directive is in effect from January 1 through December 31, 2020. The initial directive had an end date of June 30, 2020. However, the original end date was extended through December 31, 2020.

Question 3: How does “Hold Harmless” affect contracts?

To minimize delays in payments in response to COVID-19, “Hold Harmless” for general fund contracts means that service providers can shift more than 10% of a line item amount (see LIR section below), adjust/modify timelines within the contract period, and/or receive 100 percent base payments, effectively removing performance pay (PC pay), without a formal contract amendment. **All changes to budget categories, timelines and base payments must be approved by the appropriate HSD Program Specialist (PS) and management.*

Line Item Reimbursement (LIR) Contracts

LIR contracts state, “Changes between major budget categories of the contract budget of less than ten percent (10%) of the lesser major budget category need not be incorporated by written amendment; however, the City must be informed immediately in writing of each such change.” Prior to the Hold Harmless directive, all budget category changes in excess of 10 percent of the lesser major budget category require a formal contract amendment.

The directive allows service providers to shift costs between major budget categories (i.e. personnel and other expenses) to meet agency/program needs accordingly. Although there may be shifts between line items, there should be minimal changes to the LIR contract invoices. ****Changes to budget line items, including the rationale, must be documented.**

Unit Cost Reimbursement (UCR) Contracts

Service providers may adjust/modify timelines within the contract period, as necessary, due to the COVID-19 emergency. There will be no penalty to the service providers for adjusting the timeline to meet their deliverables. ****Changes to timelines must be documented.**

Outcome Based Reimbursement (OBR) Contracts

General fund OBR invoices will be paid in equal, 100 percent, base payments, effectively removing PC pay. Therefore, service providers may invoice for 100 percent of the allotted amount for each month (i.e. 100% can be billed as “base”) from January -December 2020 rather than the 80/20 split, as contractually obligated. As warranted, service providers who have already billed or have additional questions should contact their assigned PS for clarification. ****Recalculations must be documented. See question #4 for how to calculate new base payments**

Question 4: How are 100 percent base payments calculated for OBR contracts?

The new base payments are calculated by dividing the remaining contract balance by the number of months remaining through December 31,2020.

The following are guidelines for the new base calculation:

- *If no invoices or PCs have been paid, monthly base payments are calculated as follows:*

Monthly Base Payments = *Total Contract Budget/12

**Note: The total contract budget for January through December 2020*

- *If invoices or PCs have been paid, for example, January & February invoices have been paid:*

Step 1: Calculate the Total Budget Remaining for March-December:

Total Budget Remaining for March-December = (Total contract budget) –
(Amount paid for January & February invoices)

Step 2: Calculate the new monthly base for March-December invoices:

New monthly base for March-December invoices = Total Budget
Remaining/Number of Months Remaining

****Note: Recalculations due to the extension of the “Hold Harmless” to December 31st should not affect 100 percent base payments recalculated for the original June 30th deadline.** Please have service providers contact their PS if they have any questions or need clarification.

Question 5: In order to accommodate the changes to the LIR, UCR, or OBR contracts, will we need to amend the contracts?

No. Contract amendments are not required at this time. Any questions regarding contract amendments should be directed to the assigned PS.

Question 6: How does the “Hold Harmless” Directive impact the service providers that may expend less than the total amount they are paid by HSD for OBR contracts? Do they have to pay back the excess payment? Do they still have to submit the Mid-Year expenditure report?

Yes, agencies will be required to repay excess payments over \$10,000 and mid-year expenditure reports are still required.

“Hold Harmless” means service providers with contracted performance commitments are paid at 100% even if they do not meet all their performance commitments from January 2020 - December 2020. However, documentation is still required to verify invoice reimbursements, and ensure funds were expended.

Question 7: What is 100% base payment?

See questions #3 and #4.

Question 8: How do I calculate what my 100% base payment will be?

See question #4.

Question 9: Can I adjust payment for January and February to receive the adjusted 100% base payment even if we already submitted and received payment for those months?

No, it is not necessary to adjust these invoices. See Question #4 for recalculations.

Question 10: For OBR contracts and providers who have billed for performance, do we have discretion to use the new 100% base or are we expected to deduct performance from the 100% base to come up with the new base?

See question #4 for recalculations.

Question 11: Should PS email providers new invoice forms with the new base amounts? How are 2019-2020 contracts affected?

No. PS should have service providers use the “Adjustments (+/-) section to document the additional base. For 2019/2020 contracts that had invoices paid in 2019, the recalculation of base payments on the remaining contract budget is the same as 2020 calendar year contracts. See Question #4 for recalculations.

Question 12: Some service providers have OBR contracts (80% base pay; 20% performance commitments) in which PC pay is on a trimester schedule with service providers able to bill for PCs in April, August and December invoices. How does this affect base payment recalculations?

The service providers do not bill for PCs in April since they will bill 100% base for January through December invoices. If invoices were paid prior to the “Hold Harmless” directive, the remaining base payments can be recalculated, as outlined in question #4.

Question 13: Can service providers bill for the regular base, plus the additional base amount using +/- adjustment section of the invoice form?

Yes, this is the suggested method of documenting the additional base amounts on existing invoice forms. One advantage is that it is easier to track the PC payments that are converted to base payments. See Question #11 for details.

Question 14: Regarding UCR contracts, “providers may adjust what the units are in response to COVID-19 with approval.” Are Program Specialists authorized to approve changes (in consultation with their supervisor, when needed)?

Service providers need to contact their assigned PS on any budget changes, contract modification, justification requests and all other requests/changes. The PS will work with the service provider on a timeline and/or authorization for any changes or contract amendments (if applicable) in consultation with their supervisor, when needed, and with approval from the Division Management or SLT. ***Documentation must be maintained for all changes to budgeted amounts and/or timelines.*

Question 15: How does the directive impact current contracts seeking FEMA reimbursement? Do we have to amend these contracts?

HSD is not seeking FEMA reimbursement on current contracts. New contracts will be developed for COVID-19 purchases and for FEMA reimbursement requests.