



Utah Division of Purchasing
and General Services

Contract Administration and Monitoring Guide

Contract Administration/ Monitoring Guide

The purpose of the Contract Administration/Monitoring Guide (Guide) is to provide agency contract administrators guidance on improving existing contract management processes and practices and to meet the contract administration responsibilities provided in Utah Code Section 63G-6a-103. Throughout this guide, the term Administrator, Contract Monitor or Contract Manager are used interchangeably.

Planning for contract administration/monitoring should begin even before issuing the solicitation. A good contract manager ensures the contract requirements are satisfied, the goods and services are delivered in a timely manner, the financial interests of the agency and State are protected, and legal counsel is consulted where warranted. A good solicitation will include terms, requirements, and criteria that will assist the contract manager in later carrying out these tasks.

Each agency is unique, and the specific requirements of each contract vary; therefore, the information in this Guide is intended to provide flexibility, as appropriate, to ensure each contract is tracked and monitored in a way that serves the best interest of the State. The Guide provides a framework that agencies must use to make and record contract administration decisions over the life of the contract.

A key factor in successful contract administration is communication. It is essential for contract administrators to understand the provisions of the contract, including the solicitation, the terms and conditions and the scope of work, to have the ability to communicate contract obligations to all parties involved, and maintain control over the contract performance.

After issuance of a contract document, including those awarded by the Division of Purchasing, the agency is responsible for contract administration. Part of this responsibility is assuring the services or goods are provided in accordance with the terms of the contract. Planning and proactive management of a contract are crucial to effective contract administration. Contractor non-compliance and other relevant experiences related to contract performance are to be reported on a Contractor Complaint Form or on the Contract Closeout Checklist, see appendix for examples.

Contract Administrator Responsibilities

Primary responsibilities of the Contract Administrator include, but are not limited to those defined in Utah Code Section 63G-6a-103:

- a. drafting the contract;
- b. ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;
- c. executing change orders;
- d. processing contract amendments;
- e. resolving, to the extent practicable, contract disputes;
- f. curing contract errors and deficiencies;
- g. terminating a contract;
- h. measuring or evaluating completed work and contractor performance;
- i. computing payments under the contract; and
- j. closing out a contract

The Contract Administrator shall avoid the following:

- a. Asking the contractor (inappropriately or unknowingly) to perform outside of the scope of work specified in the contract without adequate documents agreed to by both parties. Awarding, agreeing to, modifying, increasing the scope and dollar value of, or signing any contract directing change without adequate documents agreed to by both parties.
- b. Issuing instructions to a contractor to start or stop work except in an emergency situation without adequate written documents.
- c. Including personal opinions, in any correspondence, including emails.
- d. Accepting a gratuity, kick-back, or any other conduct prohibited by Utah Code 63G-6a Part 24.
- e. Making commitments or promises (oral or written) to any contractor.
- f. Authorizing delivery or disposition of government-furnished property.
- g. Obligating the state agency beyond the terms and conditions of the contract.
- h. Approving items of cost not authorized by the contract.
- i. Granting deviations from or waiving any of the terms and conditions of the contract.
- j. Changing the period of performance.
- k. Authorizing subcontracting or the use of consultants.
- l. Authorizing the use of overtime.

It is strongly encouraged for each agency to have separation of duties between project management and contract administration. This helps to ensure there is oversight and review to catch and correct errors, and also helps prevent against fraud or theft. However, depending on the agency structure, a person may be responsible for a dual role.

1. Drafting the Contract

Just like other contract management processes, an agency should plan for drafting the contract. A common practice is to include a draft of the standard agency contract in the solicitation

document. This allows a potential contractor to make an offer with knowledge of the proposed contractual terms and conditions. As a practical matter, during the solicitation process, it may be difficult to prepare a draft contract with a detailed statement of work due to the potential for negotiation. Be sure to plan for adequate time to prepare the final contract.

The planning effort could begin by collecting and reviewing similar contracts used by other agencies. Do not automatically adopt terms and conditions from another contract without a thorough and independent review of how the terms and condition relate to the current procurement. Studying risks, contracting objectives, assumptions and constraints in other contracts may be helpful. Another method to plan for a contract is to prepare an outline containing headings for the major terms, conditions and provisions. This makes it easier to group related terms and conditions. An outline will also illustrate gaps in the structure of the contract. Finally, allow adequate time for an attorney to address potential legal issues.

2. Ensuring Compliance with the Contract Terms and Conditions (Contract Monitoring)

Contract monitoring is a key component of contract administration and is the key to enforcing the contract. The goal of contract monitoring is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. An effective contract monitoring system mitigates risk, with risk defined as the probability of an event or action having an adverse effect on a state agency. Also, effective contract monitoring minimizes or eliminates problems and potential claims and disputes.

A. Managing Contract Performance

Tracking the performance of the contractor is the principal function of proper contract monitoring and administration. The purpose is to ensure the contractor is performing all duties in accordance with the contract and for the agency to be aware of and address any problems or issues promptly.

Not every contract will require the same level of monitoring. All contracts should be reviewed periodically within the contract term taking into account size or contract value, associated risk, sensitivity (contracts receiving high volume of public scrutiny), and type of contract and services being provided. Small dollar value or less complex contracts may require minimum monitoring; however, that does not preclude the possibility of more detailed monitoring if deemed necessary by the agency. Conversely, large dollar contracts may not require extensive monitoring if the items or services purchased are not complex and the agency is comfortable with the contractor's performance and the level of risk associated with the contract. When assessing risks to determine the level of monitoring, the identified risks should be linked to the monitoring plan.

This function is separate from, but closely related to, the role of project manager. Typically, a project manager plans and organizes those resources required by one or more parties to a project and coordinates use of those resources, as needed, for completion of the project. More complex projects may involve multiple contracts, and simple projects may not have a separate project manager assigned.

B. Determining What to Monitor

When assigned to administer/monitor a contract, you should immediately review the statement of work and other contract terms, including contractor compliance requirements. All of these requirements are deliverables, which the contractor and agency agreed to when the contract was executed or the purchase order was issued. Design the monitoring plan to focus on important items, such as monitoring the outputs and outcomes resulting from the contract.

The extent of contract monitoring will not be the same for all contracts. The level of contract monitoring should be consistent with the complexity and level of risk of the contract, its term, and dollar value. Early in the procurement process, identify staff to participate in contract monitoring. The term “contract manager” may also mean “contract administrator”, dependent upon the organizational structure. Contract monitoring activities may include the following:

- a. Determining the sequence of activities, dependencies, required outcomes, and acceptable performance levels.
- b. Developing a plan, including start and end dates for each performance component, including milestones with accompanying timeframes, monitoring and reporting requirements.
- c. Establishing clear lines of communication, reporting specific individuals who may interact directly with the contractor.
- d. Providing access to state facilities, equipment, data, staff, materials and information. Monitoring contractor activity on a specified frequency to identify problem areas.
- e. Communicating with the Contractor and/or Project Manager on a regular basis to review progress, discuss problems and necessary changes.
- f. Addressing actual problems and resolutions.
- g. Maintaining documentation of monitoring activities and resolution of identified defaults.
- h. Verifying receipt of specified services, goods and reports.
- i. Verifying all performance measures and reports are completed in a satisfactory manner in accordance with the contract.

Whether a contract administrator performs these activities independently or under the direction of someone else depends on the organizational structure of the agency and the complexity and value of the contract.

C. Establishing and Maintaining a Contract Administration File

It is the responsibility of each contract administrator to ensure all contractual obligations are met and contract monitoring is documented. Keeping a complete master contract administration file is critical and must be maintained by the agency. This file will provide a basis for settling claims and disputes should they arise in administrative or court actions. Throughout the life of the contract, the contract administration file will provide a single, easily accessed repository for those documents related to contract duties and performance, and it should contain such things as follow:

- a. A copy of the current contract and all modifications.
- b. A copy of the Contractor document’s including:

- i. Vendor performance evaluation and backup documentation
 - ii. Required insurance documents
 - iii. Warranty information
 - iv. Licenses, permits, certifications
- c. A copy of all specifications, drawings or manuals incorporated into the contract by reference.
- d. A reference list or a list of prior contracts with this specific contractor (if they offer valuable historical data).
- e. The solicitation document, the contractor's response, evaluation determination, and the notice of award document.
- f. A list of contractor submittal requirements.
- g. A list of government furnished property or services.
- h. A list of all information and equipment furnished to the contractor.
- i. A copy of the post-award conference summary, if conducted.
- j. A schedule of compliance review and internal correspondence, if applicable.
- k. A copy of all general correspondence related to the contract.
- l. The originals of all contractor data or report submittals.
- m. A copy of all routine reports required by the contract such as sales reports, pricing schedules, approval requests, and inspection reports.
- n. A copy of all notices to proceed, to stop work, to correct deficiencies, notice of termination, or to change orders.
- o. A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules.
- p. The records/minutes of all meetings, both internal and external, including sign-in sheets and agendas.
- q. A copy of all monitoring reports: contract manager's status to supervisor, site visits, desk reviews, and expenditure documentation reviews.
- r. A copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments.
- s. A copy of all backup documentation for contractor payment or progress payment; and copies of any audits.

NOTE: Sometimes in advance of providing the contract file to an individual making a public records request, the file will need redaction of confidential material (Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code). GRAMA requests should be routed through general counsel or your designated records officer.

Agencies must maintain an original of all contracts in a central repository. This allows contract managers to reference past or current contracts for useful information relating to a current project.

In accordance with the Utah Procurement Code, documentation shall be retained for a minimum of 6 years after the expiration date of the contract. The agency contract administrator shall also adhere to any federal record retention requirements, if applicable, and, shall include written documentation of contract monitoring procedures indicated in

this guide.

D. Contract Kickoff Meeting

A *contract kickoff (post-award or work plan) meeting*, if performance includes multiple activities or covers a span of time, is held prior to the work start date with representatives of both parties (both contractor and state entity) in attendance. At a minimum, Contract Administrator of both parties must be present. This *meeting* is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of the parties. It is an opportunity to clarify and resolve any potential misunderstandings. For small-value contracts or those of short duration, a face-to-face meeting may not be necessary, but at least a telephone conference should be held with an opportunity for questions and clarifications.

The contract administrator should establish the time and place of the meeting, prepare an agenda, and notify all appropriate personnel. All instructions given to a contractor at the meeting must be within the scope of the contract. State entity personnel must not impose additional requirements upon the contractor or make changes to the scope of the contract. After the contract kickoff meeting, the contract administrator should provide minutes of the meeting detailing the items covered. The minutes should include any areas or points requiring clarification, a list of participants, and any assigned responsibilities for further action and due dates for those actions. Copies of the minutes should be distributed to all participants and must be maintained as part of the state entity's contract file. The minutes should be appropriate to the complexity and value of the contract. In cases where the contents are brief, the minutes can be informal and included in the body of a letter or e-mail.

Not every contract requires a formal kick-off meeting, but there should be some form of discussion between the contracting parties after award to ensure all parties agree on the performance requirements and the administrative procedures applicable under the terms of the contract. The post award conference should NOT be used to change the terms of the contract.

Agency personnel should decide if a post award conference is necessary. For less complex, low risk, low-dollar value contracts, a telephone call to the contractor may be sufficient. During the telephone conversation, the agency should review the major points of the contract with the contractor (e.g.; amount of contract, major performance milestones, deliverables, reports, meetings) and time and place of delivery. Factors used to determine the need for a post award conference include the following:

- Type of contract;
- Level of risk associated with the contract;
- Value and complexity;
- Length of contract, period of performance and/or delivery requirements;
- Procurement history of the supplies or services required and expertise of the contractor;
- Urgency of delivery schedule;

- Agency's prior experience with the contractor;
- Any special or unusual contract requirements; and
- Any special or unusual payment requirements

Contract Kickoff Meeting Agenda

It should be clearly communicated at the beginning of the conference that the purpose of the meeting is to explain or clarify contract requirements and not to make changes to the contract or re-negotiate the contract terms. The post award conference agenda should cover the following:

- Introduction. Introduce all participants and identify agency and contractor key personnel.
- Scope. Discuss the scope of the contract (i.e., what the agency is buying). Although this is overly simplistic, a total and complete meeting of the minds on this point will avoid problems during the life of the contract.
- Terms. Summarize contract terms and conditions, particularly any special contract provisions. This can avoid any misunderstandings later on and allows the contractor to gain a better understanding of the terms prior to beginning work.
- Requirements. Discuss the technical and reporting requirements of the contract. The technical requirements may be discussed as part of the Scope, above. It is vital that the contractor and the agency have a meeting of the minds regarding technical requirements. The contractor must understand the importance of any reports required under the contract and the importance of submitting them in accordance with contract requirements.
- Administration. Applicable contract administration procedures, including contract monitoring and progress measurement should be discussed.
- Rights. The rights and obligations of both parties and the contractor performance evaluation procedures should be summarized. The agency should explain that contractor will be evaluated on their performance both during and at the conclusion of the contract and evaluations may be considered in the selection of future contracts.
- Potential Problems. Potential contract problem areas and possible solutions should be addressed. Any issues or contract areas subject to interpretation or non-compliance, should be discussed.
- Payment. Invoicing requirements and payment procedures should be discussed, especially if the payment will be made according to milestones achieved by the contractor.
- Authority. The roles and responsibilities of the parties' contract managers, contract administrators, project managers, key personnel lead, and any other key staff should be identified. Agency personnel should explain the limits of their authority and obtain the same information regarding contractor personnel.

After the conference, the contract manager shall prepare a summary of the meeting for the contract file, which details the topics covered. The summary shall include areas requiring resolution, a list of participants, and in particular, those individuals assigned responsibilities for further action and the due

E. Monitoring

a. Performance

The Contract Administrator is responsible for monitoring the *contractor's performance*.

The *contractor's performance* (both satisfactory and non-satisfactory) must be documented. All performance problems or issues must be documented and should be addressed quickly, before the issues grow.

b. Monitoring Review Types

There are different types of monitoring available, including but not limited to: site visit, desk review, expenditure document review and monitoring by third parties. Depending on the type and scope of the contract one or more methods, or a combination of various elements, may be used.

1. Site Visit (Full and limited scope)

Full scope site visits are typically scheduled visits to the contractor's place of business/physical location of service provided. They are based on a risk assessment of the contract and cover a broad range of contract compliance and performance requirements. *Limited scope* site visits typically focus on a particular problem.

2. Desk Review

Typically, these are agency reviews of reports submitted by the contractor to the agency. Agencies are to review actual performance against the contract requirements, actual expenditures to the approved budget, and current reporting period to prior periods.

3. Expenditure Document Review

These are reviews of contractor invoices and expenditure draw requests to determine if the rates and services are the same as allowed by the contract. Determine if the supporting documents such as cost reports, third party receipts for expenses, detailed client information, etc. adequately support the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting document is insufficient to support the request, then you must report this to the appropriate management level for a decision on the appropriate response and, if then appropriate, begin the dispute resolution process as outlined in this guide.

4. Monitoring by Third Parties

In some instances, the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For example, in the case of a construction contract, the task of ensuring progress in accordance with the contract may be performed by the architectural firm that provided the construction plans. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with agency staff.

F. Establish Expectations

Establish expectations so individuals responsible for contract management and the

contractors all understand what will be overseen and the criteria used to evaluate contractor performance.

A part of establishing expectations is determining when status reports for the contract will be due and to whom the reports will be sent. A best practice for larger projects is to have the first monitoring status report about thirty (30) days after the start of the work. This will either help ensure everything is going well or uncover any issues to be resolved. Additional status reports are to be made by the contract manager throughout the contract period with a frequency based on the risks associated with the contract. For more complex contracts, status reports or meetings might be held every week.

G. Using Monitoring Review Results

Monitoring reviews, audits and investigations must be followed up on a routine basis to:

- a. Ensure corrective actions have been taken
- b. Identify common problem areas that might require training
- c. Improve future contracts

Agencies will design a system that includes criteria to be used to evaluate contract performance and defined follow-up actions as needed for each contract. The goal of follow-up is to bring the contractor back into compliance with the contract requirements. Follow-up is essential as the problem will not correct itself simply because it has been identified and included in the monitoring report. Monitoring results should also be used to improve the contract requirements for future contracts. If there are unnecessary restrictions or insufficient restrictions, this is the time to make a note of the recommended changes so future contracts can incorporate the changes.

H. Reporting

Reporting includes both contract administrator reports to management and the contractor's reports to the contract administrator. There are generally two (2) categories of reports: status reports and activity reports. Both types of reporting serve useful functions:

- a. **Status Reports** – Describe the progress of the work. The content of the status report will be consistent with and track the organizational structure of the statement of work, i.e. phases, segments, deliverables and products. A status report describes what work is complete and what work is pending. The status of work is then compared and contrasted against the contract schedule. Only work that has been verified as completed or accepted is to be categorized as complete. If there are any unresolved issues that the agency is contractually obligated to resolve, those issues are to be included in the status report and a resolution requested. If the scope of work has changed during the contract (by written contract amendment), insist that status reports track the original contract schedule, not a revised contract schedule, unless the amendment provides for a revised contract schedule. If status is tracked against a revised schedule, there is a risk the schedule will continually change and the status report will be rendered meaningless.

If the contract does not provide for periodic status reports, the agency must ensure sufficient progress is being made by the contractor. This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.

- b. Activity Reports – Describe any activity on the project; project activity is not the same as progress. A project may have a great deal of activity without making substantive progress. On the other hand, activity reporting can be a core feature of contract management. For example, a contractor payment in an outsourcing contract may be based on the number of completed transactions. In this example, activity reporting is critical to contract administration.

3. Executing Change Orders and Processing Contract Amendments

Whether or not a contract may be changed, depends upon certain principles. If a change is needed to a contract, the change has to be within the scope, or range, of what was provided in the solicitation. A significant difference would be a material or substantial change in the scope of services, and would not be allowed because it had not been originally subject to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for all of the vendors. Transparency in government procurement is a key government responsibility.

By way of example, if a contract to buy 10 desks is amended to include 300 file cabinets, the change is outside the scope of the contract because vendors did not have the opportunity to compete for the sale of 300 file cabinets. Additional vendors may have competed had they known that file cabinets were being solicited. Such a large quantity of file cabinets could also have had an impact upon which vendors competed. Other vendors may have been interested in bidding on file cabinets that were not interested in bidding on desks.

In order to determine what constitutes scope changes to advertised specifications, the significant question is whether the changes are material or substantial.

Material or substantial changes are not measured by the number of changes made to the original specifications. Rather, they are measured by whether the extent of the changes would so substantially alter the original specifications that not re-advertising the revised specifications would deny a procurement opportunity to someone who would have been able to respond to the revised specifications. If much is revised, then those changes will be treated as a new proposal. A new solicitation is needed to ensure compliance with the bidding statutes.

As a general rule, whether a change is material or substantial is a fact question. What is fundamental is the principle that materially changing solicitation specifications after receipt of responses denies an opportunity for others to participate in the solicitation. Therefore, any contract amendments are required to be within the scope of the original contract and the competitive process underlying the original contract.

It is important to remember that application of the above principles will depend upon your particular fact situation, and may not apply to the specifics of a request for proposal or request for offer. Always consult with your legal staff members before proceeding.

a. Administrative Changes

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties.

These changes are typically executed via a unilateral amendment. Examples of administrative changes include:

- Changes in billing instructions or address;
- Corrections of typographical errors not affecting the substance of the contract;
- Changes as permitted by the specific contract language;
- Changes in agency personnel assigned to the contract.

b. Substantive Changes

These are contractual changes that affect the rights of both parties. Such changes generally require bilateral amendments (agreement by both parties). Examples of substantive changes include:

- Change in the price of the contract.
- Change in the delivery schedule.
- Change in the quantity.
- Change or nature of deliverables. (i.e. the specifications).
- Change of key personnel.
- Change of any terms and conditions.

4. Resolving Contract Disputes

Proper dispute resolution is a core skill of successful contract management. The goal of the resolution process is to resolve all problems before they become difficult to resolve. It is essential to identify problems early in the performance period, use effective communication and formalize the process in writing using procedures that increase in formality as the problem persists, or for contracts with fairly simple performance requirements the Contractor Complaint Form can be used. To avoid disputes and assure the state entity has not exacerbated potential problems, it is imperative that state entity personnel respond promptly to all contractor inquiries. The general steps in the dispute resolution process are described below. However, nothing in this section will supersede the terms of the contract with respect to dispute resolution (such as provisions governing escalation process, mediation, etc.).

General Steps Governing Dispute Resolution	
Steps	Description of Step
Identify the Problem	The contract administrator should obtain all the information regarding the potential problem from all relevant sources, including the project manager, representative customers and the contractor.

Research Facts	Once the problem is identified, the contract administrator must review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the State entity cannot expect the contractor to perform outside the agreement.
Evaluate	The contract administrator should review all the facts in conjunction with the requirements and terms and conditions of the contract. The contract administrator should then confer with the program manager (and management and budget, if necessary) to determine the appropriate course of action.
Discuss with the Contractor and Written Plan of Action	Identify the problem to the contractor and discuss resolution. Frequently, what may appear to be a problem can be resolved by providing the contractor with information. The resolution (Notice to Cure) shall be in writing.
Meeting Strategy	If a meeting is necessary, the agency should prepare a plan and consider how to conduct the meeting, the desired result, the minimum acceptable result, likely responses, etc.

5. Contractor Complaints/Discrepancies

Future sanctions against a contractor (e.g., debarment) can only occur if a written record exists that the contractor was informed of its poor performance. Complaints and/or discrepancies on contractor performance should be document. This documentation is necessary to develop contractor history, evaluate contractor performance, and if required, take appropriate and timely action. Some available remedies under the contract may not be reasonably available to the State/agency if a proper record does not exist.

6. Curing Contract Error and Deficiencies

An agency may allow a contract to cure a contract error and deficiency before terminating the contract for cause. Agencies should counsel with their legal counsel before allowing a contract to cure a contract error and deficiency.

7. Termination

When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions. A contract may be terminated under distinct processes: Termination for Convenience and Termination for Default.

A. Termination for Convenience

A termination for convenience, also known as no-fault termination, allows the agency to terminate any contract, in whole or in part, at any time in its sole discretion, if it is determined

that such termination is in the best interest of the agency.

The agency shall provide the contractor with written notice specifying whether the agency is terminating all or part of the contract. The notice of termination shall give the date of termination. If the contract is being selectively terminated, the agency should specify which part(s) of the contract are being terminated.

A termination notice should be issued which includes wording similar to: Pursuant to Section ___, Termination, this contract is hereby terminated effective [date]. [Contractor name] is directed to immediately stop all work, terminate subcontracts, and place no further orders.

In accordance with this Notice of Termination, you shall:

- 1) Keep adequate records of your compliance with this notice, including the extent of completion on the date of termination.
- 2) Immediately notify all subcontractors and suppliers, if any, of this Notice of Termination.
- 3) Notify the agency Contract Administrator [name], of any and all matters that may be adversely affected by this Termination; and
- 4) Take any other action required by [agency name] to expedite this Termination.

The contractor will generally be paid for allowable costs incurred up to the termination. The agency will not be liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of termination.

Upon receipt of any invoice from the contractor for work performed prior to the Notice of Termination, the agency should thoroughly review the invoice to ensure that no excessive costs are included.

An agency should consult with their legal counsel before terminating a contract for convenience.

B. Termination for Default (or for Cause)

A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, non-conformance to specifications), but holding a contractor in default is a relatively drastic remedy and usually means attempts to correct the problem have failed. Many contracts require a party to give notice if it considers the other party to be in default. Normally, a contractor would not be held in default until it has had an opportunity to correct a performance problem and some legal input has been given.

If it is determined that a contractor must be held in default, a “Notice of Default and Opportunity to Cure” must be sent to the contractor, describing the unacceptable contractor performance, resolution required action and a deadline to perform the required activity. It is very important that a contractor be given notice of a default in writing. Resolution of performance issues should be worked out with the contractor if at all possible.

Termination for default should be used as last resort and not as punishment. The purpose of a termination for default is essentially to protect the interests of the agency while obtaining the necessary goods or services from another source.

Factors to consider prior to making a termination for default decision include:

- 1) Has the agency done everything within reason to assist the contractor in curing any default?
- 2) The provisions of the contract and applicable regulations.
- 3) The specific contractual failure(s) and the explanation provided for the failures.
- 4) The urgency of the need for the contracted supplies or services. The agency may need to weigh the respective benefits and/or disadvantages of allowing a delinquent contractor to continue performance or resoliciting a new contractor.
- 5) The availability of the supplies or services from other sources and the time required to obtain them (compared to the additional time the current contractor needs to complete the work).
- 6) Availability of funds and/or resources to re-purchase in the event such costs cannot be recovered from the delinquent contractor. Under a termination for default, the agency is within its rights to demand re-procurement costs from the defaulting contractor. Nevertheless, the contractor may not be financially capable to finance the re-purchase, or such demand may result in protracted legal action.

8. Measure or Evaluating Completed Work and Contractor Performance

It is basic good practice to know that you are getting what you contracted for. This may be as simple as confirming on time delivery of goods that conform to specifications. However, with repeat business and/or more complex service requirements it makes sense to monitor performance against contract requirements over time.

At the start of a contract there is inevitably a degree of risk and uncertainty for the parties involved. As the contract proceeds, both parties learn from experience and the risk begins to diminish as the original contract assumptions come to be tested. However, it is easy to become complacent and let slipping standards go unnoticed; therefore, there is a need for monitoring and measurement of performance against that agreed in the contract, its supporting service level descriptions and other documentation such as partnering agreements.

Monitoring the performance of suppliers is a key aspect of contract administration, but one which can easily be under-resourced and neglected. When performance monitoring is undertaken post-contract, the purpose is twofold:

- a) to ensure that the supplier is meeting the performance criteria, e.g. service levels and quality, laid down in the contract
- b) to identify room for improvement

Elements of supplier performance

There are three different aspects to the monitoring of supplier performance post-contract:

1. Gathering factual, and therefore objective, information about their performance such as lead-times from order, quality standards being met, pricing compliance and whatever else is laid out in the contract. This type of information can usually be obtained from IT systems within the organization in the form of management information. As with all of these aspects, it is good practice to be as consistent as possible in the approach to the performance monitoring.
2. Obtaining the experiences of the users of the contract (for example, in respect of service, attitude and response rates). This should be as objective as possible, although in some cases it may, inevitably, be subjective. One way to collect information on performance is by individual interview against a defined set of questions. This can be face-to-face or on the phone but needs to be interactive so that the interviewer can explore the background when necessary. This contract administration function will have to assess the validity of any subjective remarks. Sometimes commitment is required from customers, such as engineers in the field, to keep records of their experiences of working with a supplier in order that objective factual data can be used. Another way is to undertake customer satisfaction surveys, which can be quite short and distributed by email.
3. The contractor's experience of working with the agency must be considered in the evaluation, as it might be the case that they are facing unnecessary obstacles or dealing with difficult people

9. Contract Payments

Agencies should work with their finance personnel in regards to make a payment.

a. Payment Terms

The costs billed by the contractor must be in accordance with the contract payment terms. Total payments must not exceed the contract limits.

Standard payment terms are Net 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card if accepted by the contractor for payment. If payment is made by procurement card, then payment may be processed immediately by the contractor.

b. Availability of Funds

Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency. Authorized payments should be consistent with the contract terms and any deviation requires a contract amendment.

c. Payment Approval Process

NOTE: The contract should specify payment model (e.g. per deliverable, periodic payments, on final acceptance, etc.), payment rate, reimbursement description and amount, if any, and the invoicing process.

The costs billed by the contractor must be in accordance with the contract payment

terms and agency payment policy and procedures.

Invoices must be reviewed to ensure the contractor's billing coincides with the contract's progress. This requires the contractor's progress to be measurable. Invoices submitted, are insufficient indicators of the contractor's progress.

If the agency believes the requested payment exceeds the contractor's progress, an explanation should be requested from the contractor prior to approval of the invoice. Payment should be withheld pending agency satisfaction with the contractor's progress.

Invoices must be approved prior to payment. The invoice should be reviewed to ensure:

- The contractor is billing only for goods or services received by the agency.
- The goods or services have been accepted.
- The invoice is correct and complies with the terms and conditions of the contract as to identity of the charges and any limits on rates or amounts.
- The total payments do not exceed the contract limits.

Services contracts are unique because acceptance of a good or service is not necessarily an indicator that an invoice should be paid. Problems with services contracts generally surface after invoices are paid. Contract managers dealing with services contracts should ensure mechanisms exist to incentivize contractors against poor performance when possible and that future payments may be withheld until performance improves.

10. Contract Closeout

It is the responsibility of each agency to ensure contracted work has been completed in a satisfactory manner and the contract is ready for closeout prior to final payment. The Contract Closeout Checklist can serve as a tool to assist the agency during that process. The contract closeout file should contain all necessary documentation at the time of closeout. **Final payment shall never be made until all work is complete and all deliverables are received and accepted.**

The purpose of closeout activities is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. Also, contract closeout is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

To initiate the closeout process, the agency shall first determine that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for close out when:

- All deliverables, including reports have been delivered, validated and accepted by the agency. Contract managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed.
- All agency furnished equipment and materials has been returned.
- All disputes or corrective actions have been resolved.
- All monitoring issues have been resolved.
- All property inventory and ownership issues are resolved including disposition of any

equipment or licenses purchased under the contract.

- Final acceptance from the Project Manager has been received (if applicable).
- Contractor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.
- The parties should review any warranty period that extends past the termination of the contract.
- Final payment has been made.

In practice, many contracts cannot be closed out after the date the above items are all completed, because the warranty period is effective well beyond such date and therefore the contractor may not have “satisfactorily performed all required contractual obligations” until the end of the warranty period. Furthermore, sometimes even at that point the contract cannot be fully closed out, because it may, for example, require the contractor to “have repair parts available for years after contract award.” All closeout activities should be performed as soon as practicable and the file maintained until any long term obligations are complete.

It is recommended that agencies have a closeout process for contracts that allow sufficient time to finalize closeout procedures, including completion of all final obligations and issuance of payments. Good contract management and administrative procedures require contracts be closed out and filed, not open or unresolved for an extended amount of time beyond the expiration date.

Retention of Contract Documents

State agencies have always been required to maintain documentation related to the contracting practice in state government. Openness, accountability, and honesty define government transparency. Transparency is government’s obligation to share information with citizens. The right and the means to examine the process of decision making allows citizens to see what their government is doing.

A state agency:

- (1) shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and
- (2) may destroy the contract and documents only after the seventh anniversary of the date:
 - (A) the contract is completed or expires; or
 - (B) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

Keeping one complete master contract administration file is critical. The file will provide a basis for settling claims and disputes should they arise in administrative or court actions.

Throughout the life of the contract, the contract administration file should contain such things as:

- A copy of the current contract and all modifications;

- A copy of all specifications, drawings or manuals incorporated into the contract by reference;
- A reference list or a list of prior contracts with this specific vendor (if they offer valuable historical data);
- The solicitation document, the contractor's response, evaluation determination, and the notice of award document;
- A list of contractor submittal requirements;
- A list of government furnished property or services;
- A list of all information furnished to the contractor;
- A copy of the pre-award conference summary, if conducted;
- A schedule of compliance review, internal correspondence, if applicable;
- A copy of all general correspondence related to the contract;
- The originals of all contractor data or report submittals;
- A copy of all routine reports required by the contract such as sales reports, pricing schedules, approval requests, and inspection reports;
- A copy of all notices to proceed, to stop work, to correct deficiencies, or change orders;
- A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules;
- The records/minutes of all meetings, both internal and external. Include sign-in sheets and/or agendas;
- A copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments; and
- A copy of all backup documentation for contractor payment or progress payment; and copies of any audits.

Agencies should maintain an original of all contracts on file in a central repository. This allows contract managers to reference past or current contracts for useful information relating to a current project.

Note: The Division of Purchasing maintains an electronic and digital copy of the contract for seven years; however, an agency should maintain its own copies of the contract file.

Appendix

Appendix A – SAMPLE Contract Monitoring Checklist

It is the responsibility of each agency to ensure all contractual obligations are met and contract monitoring is documented. Each contract is unique and the agency may modify this tool as required to meet its particular circumstance.

Item #	Contract Monitoring	Agency Documentation	Yes/No
1.	Contract: Contract number/ effective date/contractor name/purchase order number.	Contract #: _____ Contract Effective Date: __ Contractor Name: _____ Contract Renewal Options? _____ Purchase Order #: _____	Yes / No
2.	Agency Contract Administrator: Name/title/contact information of the person responsible for ensuring all contractual obligations are met.	Name: _____ Title: _____ Phone #: _____ Email: _____	
3.	Monitoring Procedures/Methodology: Written documented contract monitoring procedures/methodology.	Agency has a written contract monitoring procedures?	Yes/No
4.	Delivery: Delivery date specified in the contract/date of delivery.	Contract specified delivery date: Date agency received item(s): Full or Partial Delivery? Delivery in Accordance with Contract?	Full/Partial Yes/No
5.	Acceptance: Item(s) delivered were in accordance with contract specifications.	Items delivered were accepted (met contract specifications)? Latent material defects?	Yes/No Yes/No
6.	Warranty: Item(s) warranted in accordance with contract.	Warranty work was required? If so, warranty was performed in accordance with the contract?	Yes/No Yes/No
7.	Invoice: Invoice price mirrored purchase order price.	Invoice matched purchase order price? If no, invoiced more or less than PO?	Yes/No More/Less
8.	Default of Contract: Was contractor held in default of contract and/or debarred.	Was the contractor held in default? Was a contractor complaint form provided to the agency?	Yes/No Yes/No
9.	Reports: All reports required by the contract were provided timely/accurately/prescribed manner.	Contractor reports were provided by the required due date? Contractor reports were accurate (when initially submitted)? Contractor reports were in the prescribed manner?	Yes/No Yes/No Yes/No

Appendix B – SAMPLE Contract Administrator File Checklist

It is the responsibility of each agency to ensure all contractual obligations are met and contract monitoring is documented. This checklist serves as a tool to assist the agency during that process. *(Include in the contract monitoring folder/binder.)*

Department: _____

Completed By: _____

Contract Number: _____

Contract Begin/End Date: ____

Name of Contractor: _____

Contract Manager: _____

Contract Management Activities	YES	NO	N/A
General			
Does the contract file contain a copy of the signed, executed current contract?			
Does the contract file have a copy of all attachments listed in the contract?			
Does the contract file have all amendments, modifications?			
Does the contract file indicate a copy of the insurance certificate was obtained and is on file?			
Does the contract file contain any necessary licenses, certifications, etc.?			
Does the contract file contain all warranty information?			
Does the contract file contain a list of contractor submittal requirements?			
Does the contract file contain a list of all information furnished to the contractor?			
Does the contract file contain a list of government furnished property or services?			
Does the contract file contain all general correspondence related to the contract?			
Does the contract file contain originals of all contractor data or report submittals?			
Timeline			
Has a Contract Monitoring timeline been developed for all activities required under the contract? This might include but not limited to: Dates for completing and submitting reports to the Project Manager and/or Administrative Offices.			
Project Monitoring			
Has a Project Plan been developed, based on contract specifications or other applicable project or programmatic requirements?			
Does the contract file have all notices to proceed, to stop work, to correct deficiencies, or change orders?			
Does the contract file have all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules?			
Does the contract file have the records/minutes of all meetings, both internal and external? Include sign-in sheets and/or agendas?			
Does the contract file have all monitoring reports, contract manager's status to supervisor, site visits, desk reviews, and expenditure documentation reviews?			

Does the contract file have all records of complaints and contractor disputes?			
Contract Management Activities – Cont.	YES	NO	N/A
Fiscal Monitoring			
Has a plan been developed to do periodic monitoring of contract pricing (PO and P- card)?			
Does the contract file have all backup documentation for contractor payment or progress payment and copies of any audits?			
Does the contract file have all contractor invoices, information relative to discount provision for prompt payment, letters pertaining to contract deductions or fee adjustments?			
Ensure the contract authorized total dollar value has not been exceeded			
Corrective Action Plan			
Has a Corrective Action Plan been developed to deal with any contract issues that might arise between the contractor and the Agency?			
Reporting			
Have periodic reviews been setup within this contract to discuss spend, customer service, pricing issues, billing and invoicing, etc.			
Does the contract file have all routine reports required by the contract such as sales reports, pricing schedules, approval requests, inspection reports, etc.			
Contract Close-out			
Determine that the contractor has satisfactorily performed all required contractual obligations			
Conduct a post contract evaluation and the contract close-out procedures. Ensure process is documented			
List of Stakeholders			
Does the contract file contain the names and contact information for all major stakeholders in this project?			

Appendix C – Contract Kickoff Meeting Checklist

<Insert Date and
Time>

<Insert Location><Insert Conference Number and Access Code, if applicable>

Topic		
Goal and Objective for the meeting		
Review of Agenda		
Introductions		
Agency Team and their roles (point of contact for Contractor)		
Communication Protocol		
Implementation Timeline <ul style="list-style-type: none"> a. Decisions or obstacles impacting timeline b. Factors to be considered c. Due dates for gathering & definition of requirements (if applicable) d. Impact on other agencies/divisions/units (if applicable) e. Specific Contractor implementation tasks f. Specific Agency implementation tasks 		
Data Flow <ul style="list-style-type: none"> a. System of record for data b. Determine data points and flow for end receipt 		
Functionality and Informatics Considerations: (if applicable) <ul style="list-style-type: none"> a. Telephonic Enrollment b. Web-Portals c. Access to the Agency's offices and equipment 		
Structure and frequency of future meetings <ul style="list-style-type: none"> a. Format b. Duration c. Onsite at Agency or remote 		
Financial and Performance Monitoring Considerations		
a.	Requirement for periodic evaluation reports of contractor performance and/or progress reports be furnished the purchasing office	

b.	That maintenance manuals, parts lists and as-built drawings have been obtained prior to authorization of final payment or as required by contract terms	
c.	A clear understanding of all contractor supplied warranties or bonding commitments	
d.	The need to advise the purchasing office if changes to the contract, follow-up maintenance or other services, etc., may be required	
e.	Acceptance and approval of the receipt of goods and services and documenting the contractor's invoices for approval of payment	
Be sure the user has encumbered funds to pay for services that overlap fiscal years.		
Provide a copy of the contract and any subsequent changes to accounts payable for invoicing/payment action verification.		
Establish and plot critical contract performance milestones required of contractor (e.g., checklist, progress reports or other written deliverables).		
Compile a tracking report on payments made against the contract.		
If the contract is renewed be sure price and all other requirements are based upon conditions of the basic contract.		
If contractor's performance or delivery is unsatisfactory, issue a Procurement Complaint Form, Cure or Termination letter (as appropriate). Sample letters are included. Should action not yield satisfactory results or assistance is needed, contact your procurement agent.		
If performance and payment bonds are required, be sure copies have been obtained and validity verified by confirming with surety underwriter prior to start of work.		

Appendix D – SAMPLE Contract Closeout Checklist

It is the responsibility of each agency to ensure the work under a contract has been completed and the contract is ready for closeout prior to final payment. This checklist serves as a tool to assist the agency during that process. Each contract is unique and the agency should customize the checklist as required to meet its particular circumstance. The contract file should contain all necessary documentation at the time of closeout. **Absent specific provision in a contract to do so, final payment should never be made until all work is complete and all deliverables are received and accepted.**

Contractor Name	Contract Number	Project Completion Date		
Person Completing Checklist		Project Title/Name		
Task	Yes	No	NA	Date Completed
Administrative Issues				
The contract administration files are reviewed				
The central file is complete, organized and conforms to regulations governing contract administration as specified by the public agency.				
The contractor has notified the agency that all work required by the contract is complete				
The contractor has complied with all contractual terms and conditions				
All file documents have been signed with the original signatures. This includes invoices, vouchers, letters to contractor, memoranda, official correspondence etc.				
All final determinations have been completed.				
All optional provisions have expired.				
All time extensions have expired.				
All change orders and modifications, have been signed, defined and included in the central file.				
Monitoring				
All monitoring issues have been resolved				
The monitoring plan updated and documentation of all monitoring requirements accurately reflects the status of all monitoring activities as outlined in the monitoring plan.				
All agency specific required approvals have been received.				
The contractor has complied with all contractual terms and conditions.				
Deliverables				
All contract deliverables have been received, reviewed, and accepted including all required reports				

Task	Yes	No	NA	Date Completed
Final Property Close Out				
The property inventory report has been received from the contractor				
All Government –owned property, real or personal, either furnished by the government or acquired by the contractor for the account of the Government has been accounted for				
Final Security Close Out (if applicable)				
There has been a Disposition of all Classified Material (Proprietary, Trade Secrets, Sensitive, Confidential, Personal /Privacy) generated to or accessed by the contractor in the performance of the contract.				
Final Patents Closeout (if applicable)				
Final New Technology (including: invention, patents, and copyright) disclosure report received				
Report affirming that no technology, inventions, patents or copyrights resulted from the contract				
Final Payments and Invoices				
All disallowed payments, performance, deliverables, or suspended costs been resolved.				
All reconciliation has been completed in conjunction with a financial report verifying all payments have been paid				
Refunds, rebates, and/or credits have been annotated in the file.				
The contract file contains a record of all payments made to the contractor.				
All excess funds, such as un-liquidated obligations have been verified and the de-obligations of funds have been accomplished, if required?				
Final invoice has been received, reviewed, accepted and paid.				
Contract Completion Statement				
After final acceptance and final payment has been made, a Contract Completion Statement is prepared and issued officially stating that the contract is complete in its entirety, except for any warranty periods and may be closed and properly archived.				
Contractors Performance Report				
A Contractors Performance Report has been prepared, if applicable				