Contract Administration Guide

POLICY

Contract Administration 30.3.3

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GLOSSARY OF TERMS USED IN THIS DOCUMENT

For purposes of this document, the following definitions apply:

**Contract**: An agreement between two or more entities which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of this policy, “contract” means “public contract” and can be in the form of a Purchase Order, a Contract or Task Order Contract.

**Contract Administration**: All functions related to a given contract between DOC and a contractor from the time the contract is awarded until the work is completed and accepted or the contract is terminated, payment has been made, and disputes have been resolved. Contract administration includes amendments and contract close out.
**Contract Administrator:** A DOC employee who is assigned the duties and responsibilities for providing contract administration, either as a part of the employee’s position description, or as assigned within a particular contract. The Contract Administrator may delegate in writing a portion of the contract administrator’s responsibilities to a technical representative for specific day-to-day administrative activities for each contract, including communications. DOC employees assigned to monitor contract performance are technical representatives and not contract administrators.

**Execution:** Execution is the date when all required approvals and signatures have been obtained on the Contract.

**Expenditure Authority:** The authority given by an approving officer to expend state funds by review, approval, and signature of a claim of authorization document. Such documents may include purchase requests, invoices, charge or credit card invoices (SPOTS, Voyager, etc.), contract invoice, or other documents that commit department funds.

**Price Agreement:** A public contract for the procurement of goods or services with a set price with:

1. No guarantee of a minimum purchase; or
2. An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services in which the contracting agency does not guarantee a minimum or maximum additional purchase.

**RESPONSIBILITIES**

The Contract Administrator is responsible for ensuring the terms of the contract are met by both parties, including compliance with specifications, statement of work, schedule, and costs aspects of the contract.

Typically, the Contract Administrator is the point of contact for the contract for both the contractor and agency staff. The Contract Administrator may delegate specific day-to-day contract administration duties to others; however, the responsibility for compliance with the contract remains with the Contract Administrator. Contract administration duties must be delegated in writing and must be documented in the contract administration file.
Typical duties include:

- Verifying that the Contractor complies with the contract
- Monitoring contract performance
- Correcting and remedying problems
- Ensuring contractor does not perform services outside the scope and term of the contract
- Authorizing payments
- Initiating contract request forms
- Monitoring expenditures
- Involving procurement and contract specialist when dealing with contractual issues
- Performing contractor closeout functions

Why is it important? It ensures ODOC receives the services we are paying for. We need to be good stewards of public money as well as demonstrate contractor and agency compliance during audit situations. By doing so, we can eliminate frustration, headaches and embarrassment.

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**PLANNING FOR CONTRACT ADMINISTRATION**

Before the contract is even executed, you should start planning how it will be administered. The amount of time and effort expended to administer a contract should be tailored to the size and complexity of the contract.

Identify:

- What you are going to monitor?
- What resources are available to help you?
- What will be delegated and to whom?
- How you will stay in communication?

If delegating a portion of the contract administration duties, document the delegations in writing and share it with others, as needed.
GETTING STARTED

Read the contract! Know what is required of the Contractor and DOC like the back of your hand!

- Verify the effective date and expiration dates in the contract.
- Identify key provisions and exhibits, such as statement of work for services and compensation provision.

Set up contract administration file. Place copy of contract and notice to proceed in file.

Recommended: For long term or complex projects, you should schedule a contract kick-off meeting with key agency stakeholders and contractor team. The following are suggested topics of discussion:

- Contract requirements and expectations
- Agency’s point of contact (typically the Contract Administrator)
- Delegated roles and responsibilities
- What is required to make changes to the contract (amendment)?

CONTRACT ADMINISTRATION FILE

Maintain a contract administration file for each contract you are responsible for. Files may be kept electronically or in hard copy or both.

Keep copies of the following:

- Original, executed contract
- Any executed amendments
- Contract Administrator Verification Form, if applicable
- Email correspondence with contractor
- Letters/Memos
- Notes tracking activities, communication or progress

Contract Administrators can find copies of their contracts on the U Drive (U:\General Services\Contracts\Contract Administrators). They are placed in folders using the Contract Administrator’s name.
INDEPENDENT CONTRACTOR

Often, DOC outsources work because of lack of skills or lack of available resources for DOC employees to perform the work. DOC must conduct business with Contractor staff in a manner that does not create an overall impression of an employer-employee relationship.

Creating a relationship where Contractor staff functions in the same manner and capacity as DOC employees may expose DOC to significant costs and liability. For example, entitlement to PERS benefits, violation of collective bargaining agreements, withholding of taxes.

The type of relationship is defined as the result of:

- The contract's terms (including the Statement of Work), and
- The manner of contract administration during the performance of the contract.

In other words, the Statement of Work must reflect, and the actual manner in which business is conducted during the life of the contract must demonstrate that Contractor is an independent contractor. When Contractor staff are subject to relatively continuous supervision and control by State employee(s), the relationship could be construed as an employer-employee relationship.

The following table is a general comparison of an Independent Contractor and a State employee.

<table>
<thead>
<tr>
<th>Independent Contractor</th>
<th>State Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free from 1Direction and Control by the State person or organization for whom services are being performed.</td>
<td>2Means and 3Manner of work are controlled by the State.</td>
</tr>
<tr>
<td>Does tasks in own way or in the way identified in a contract’s Statement of Work.</td>
<td>Does tasks the State’s way.</td>
</tr>
<tr>
<td>Sets own hours or in the way identified in a contract’s Statement of Work.</td>
<td>Works hours set by the State.</td>
</tr>
<tr>
<td>Has the right to hire and fire workers.</td>
<td>Is hired and/or fired by the State.</td>
</tr>
<tr>
<td>Independent Contractor</td>
<td>State Employee</td>
</tr>
<tr>
<td>-------------------------------------------------------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td>Provides equipment, tools, materials and supplies needed to</td>
<td>State provides equipment, tools,</td>
</tr>
<tr>
<td>do the job.</td>
<td>materials and supplies.</td>
</tr>
<tr>
<td>Not eligible for employee benefits provided by the State.</td>
<td>Eligible for employee benefits provided by the State.</td>
</tr>
<tr>
<td>Liable for performance errors.</td>
<td>State is liable for employee performance errors.</td>
</tr>
<tr>
<td>Performs services for several different customers.</td>
<td>Works primarily for the State.</td>
</tr>
<tr>
<td>Has, or provides, necessary skills and training to perform</td>
<td>Trained by the State to perform the job.</td>
</tr>
<tr>
<td>the services.</td>
<td></td>
</tr>
</tbody>
</table>

1^Direction and Control^ - Contractor must be free to decide the manner and means by which the services are performed; however, ODOC has the right to specify the desired service outcome.

2^Means^ - Resources used or needed in performing services. Contractor must determine which resources to use in order to perform the work.

3^Manner^ - The method by which services are performed. Unless the Statement of Work provides otherwise (e.g. design specification), Contractor must be free to determine how to perform the work.

Maintain independent contractor business relationship

- Do not control the means, manner or method of how the contractor or subcontractors perform the work. Instead, focus on:
  - Is work completed as scheduled in the contract?
  - Does completed work meet the requirements in the contract?
- Factors that imply employer-employee relationship should be avoided or mitigated as much as possible to preserve independent contractor status.
Tools for Monitoring Performance:

- Know your contract like the back of your hand.
- Know what the Contractor's obligations are.
- Talk with ODOC employees who are using or are close to the services being performed.
- Maintain contact with the contractor
- Use your Contracts Officer as a resource
- Document!

Upon receipt of services and goods:

- Measure against requirements in the contract.
- Address quality and performance issues immediately.
  - Consider agency's impact on performance. Is there something the agency did or did not do that contributed to the problem?
  - Is the contractor interpreting the requirement differently that intended?
  - Provide clear and timely communication to contractor.
  - Contractor should work toward timely and adequate resolution to issues, as appropriate.
- Document performance issues and place in contract administration file
  - Keep comments objective
  - Notify contractor in writing of quality or performance issues.
  - This information may be needed if agency decides to terminate the contract for breach.
  - Documenting poor quality or performance may help justify not awarding future contracts for similar purchases or work.
  - Keep the Contracts Officer informed of all performance issues. The Contracts Officer may provide you advice as to how they would like you to handle specific performance issues.
- Notify Contracts Officer immediately if contractor fails or refuses to remedy performance or non-compliance issues.
Specific to Goods

- Document receipt of goods
  - If shipping requirement is FOB destination, agency has the option of refusing delivery of packages that are visibly damaged. Notify contractor immediately.
- Monitor timeliness of product delivery
- Confirm items received were what agency ordered.
- Confirm quality of projects is acceptable.

Specific to Services

- Monitor and inspect work to make sure it is completed in accordance with contract requirements and schedule.
- If work is partially accepted or rejected for not meeting requirements, provide contractor with clear information about the issues and confirm the next step:
  - Contractor corrects work at no additional cost. Contract Administrator sets due date for completion of corrected work.
  - Completed work is accepted for a negotiated reduced work.
  - Other options as agreed to by the Contract Administrator.

What Happens if You Do Nothing?

- Costs the department money
- Puts the department at risk
- Violates the Contract Administration Policy
- Spurs audit findings
- May find its way into the press

DO SOMETHING!

**AMEND CONTRACT (OR PO)**

Any changes to the contract that impact cost or requirements must be added to the contract by a written amendment.

- DOC cannot pay for goods or services that are not included in the contract.
- Specifications and requirements that are not in the contract are not enforceable.
• Do not request goods or services that are not in the contract. You may be held personally liable for payment.
• Do not amend to add funds unless you are purchasing more goods or adding services or complexity that requires more effort.

Specific to Goods

• Amend for renewals, price increases, product updates, and changes to agency’s specification requirements.
• Adjust contract expiration and total contract amount accordingly.

Specific to Services

• Amend to add, delete, or revise work or requirements.
• Adjust contract expiration and total contract amount accordingly.

Steps for Amending a Contract

• Determine what revisions need to be made to the original contract, including previous amendments.
• Submit a contract request form (approved by the Cost Center Approver) that includes:
  o New amended dollar amount
  o Description of the revised statement of work
    ▪ This can be done by providing changes to the current statement of work (identifying revisions or additions using the tracked changes functionality in Microsoft Word or highlighting the revised areas). This makes it easier for the Contracts Officer to see proposed changes.
    ▪ If you have questions on best method to provide revisions, contact your Contracts Officer
  o Revised expiration date, if applicable
• Contract Administrator shall ensure ample time is set aside for amendment drafting as well as legal sufficiency review.
LEGAL SUFFICIENCY REVIEW

OAR 137-045 requires DOC to submit Contracts and Amendments to DOJ for legal sufficiency approval when the contract exceeds $150,000, or when the amendment will add funds so that the amended contract exceeds $150,000 (or adds $150,000 since the last legal sufficiency review).

DOC shall not fragment or segregate transactions for purposes of circumventing the legal sufficiency approval requirement.

INVOICE REVIEW

Upon receipt of invoice:

- Verify accuracy of invoice.
- Do not pay for goods or services that are not in the contract.
- Do not pay for goods or services that have not been received or completed.
- If your invoice doesn’t match the contract pricing or format, contact the contractor, direct them to the section of the contract that details the pricing language or invoicing submittal requirements and require the contractor to resubmit the invoice.
- Pay within term specified in contract, typically Net 30, but not more than 45 days from receipt of invoice.

NOTE: Keep in mind that we cannot make changes to the pricing after work has been completed. Contractor has agreed to the current pricing requirements. In order to make changes to pricing, this needs to be done by amendment, in advance.

Specific to Goods

- Match invoice with PO or other ordering document, and packing slip or other document that confirms goods were received.

Specific to Services

- Verify invoice against contract compensation terms and status of work completion.
CONTRACT CLOSEOUT

Upon completion of the contract, verify:

- All required goods or services were received and approved.
- Product and deliverables met requirements in contract.
- Any agency property or information is returned.
- All actions related to amendments or changes are concluded.
- All outstanding issues and payments are settled.