



Contract Administration Guide

POLICY

Contract Administration 30.3.3

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GLOSSARY OF TERMS USED IN THIS DOCUMENT

For the 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 action. 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 for a Work Order Contract. No work can be performed until a contract is fully executed.

Contract Administration: All functions related to a given contract between a designated ODOC staff and a Contractor from the time the contract is awarded until all work is completed and accepted or if the contract is terminated, and all payments have been made, and disputes have been resolved. Contract Administrator (CA) duties include requesting amendments and all tasks through contract close out.

Contract Administrator: An ODOC employee 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. A CA is required to complete the (11 Module) DAS training prior to administering contracts. The CA may delegate in writing a portion of their responsibilities to a technical representative for specific day-to-day administrative activities for each contract, including communications. Before a delegation can occur, the staff being assigned the delegated tasks must complete the (4 Module) ODOC training. ODOC employees assigned to monitor a portion of the contract performance are technical representatives and are not the CA. The delegation of duties does not absolve the CA of any responsibilities.

Contracts Officer: The contracts and procurement unit staff assigned to a contract who serves as the point of contact.

Execution: 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 invoices, 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.
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 future purchase.

RESPONSIBILITIES

The CA is responsible for ensuring the terms of the contract are met by both parties, including compliance with specifications, statement of work, schedule, and cost aspects documented in the contract.

Typically, the CA is the point of contact for the contract for both the Contractor and agency staff. The CA may delegate specific day-to-day contract administration duties to others; however, the responsibility for compliance with the contract remains with the CA. CA duties must be delegated in writing, with a copy provided to the Contracts Officer, and must be documented in the CA file.

Typical CA duties include:

- Verifying the Contractor complies with the contract.
- Monitoring contract performance.
- Involving the Contracts Officer when dealing with contractual issues or problems.
- Correcting and remedying problems.
- Ensuring the Contractor does not perform services outside the scope and term of the contract.
- Verifying attendance, if applicable.
- Reviewing invoices to ensure they are accurate and are not duplications.
- Ensuring funds remain on the contract.
- Monitoring expenditures.
- Authorizing payments.
- Submitting invoices timely. Ensure all required information is included, such as contract number so they can be paid as soon as possible.
- Initiating contract request forms for new contracts or for amendments prior to expiration dates.
- Performing all contract closeout functions.

Why is this important? It ensures ODOC receives the services outlined in the contract. It is important to be good stewards of public money as well as demonstrate Contractor and agency compliance during audit situations. By doing so, it can eliminate frustrations, headaches and embarrassment.

PLANNING FOR CONTRACT ADMINISTRATION

Before the contract is even executed, the CA 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 will you ensure the deliverables are received as contractually required or as invoiced, especially considering the CA may not be located where the services are being performed?
- How you will maintain communication.

If delegating a portion of the CA duties, ensure the staff being delegated to has completed the four (4) training modules by confirming with the Contracts Officer. Document the delegation in writing and share it with the Contracts Officer and others, as needed. If the duties include ensuring the Contractor performs the services described in the contract against the invoices submitted, work with the Contracts Unit to brainstorm various tools that may be utilized to assist in the verification process. The Contracts Officer may be able to add language to the contract to provide more specific requirements, such as, reports that demonstrate who is being treated and for which days, specific forms to be filled out by the Contractor and submitted with their invoices or any other documents to assist the CA. It is possible something can be done internally such as verifying the institution's visitor log information to determine if the Contractor actually showed up as invoiced. Each individual contract is different so the tools may vary based on the services being performed and the location at which they are provided.

GETTING STARTED

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

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

Set up a CA file. Place a copy of the contract and notice to proceed in the file.

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

- Contract requirements and expectations.
- The agency's point of contact (typically the CA).
- Delegated roles and responsibilities.
- Due dates and other important milestones.

Review steps required to amend or make changes to the contract. If a CA requires AFAMIS training to track payments or to obtain reports, contact Vicki Stanley at vicki.stanley@doc.state.or.us or Jason Adams at jason.b.adams@doc.state.or.us

CONTRACT ADMINISTRATION FILE

Maintain a Contract Administration file for each contract. Files may be kept electronically, in hard copy or both.

Keep copies of the following:

- Original, executed contract.
- Any executed amendments.
- Contract Administrator Verification Form, if the contract is over \$150k
- Sub-delegation form, as applicable.
- Email correspondence with the Contractor.
- Letters/Memos.
- Notes tracking activities, communication or progress.
- Invoices (optional)

CA's can find pdf versions of their executed contract documents on Smartsheet through the ODOC Hub. Select Divisions, CFO and then select Purchasing & Contracts. For additional instructions review this file: [Smartsheet overview](#).

INDEPENDENT CONTRACTOR

Often, ODOC outsources work because of lack of skills, or due to lack of available resources for ODOC employees to perform the work. ODOC 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 the Contractors function in the same manner and capacity as ODOC employees may expose ODOC to significant costs and liability. For example, entitlement to PERS benefits, violation of collective bargaining agreements, withholding of taxes, etc.

The type of relationship is defined as the result of:

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

In other words, the Statement of Work, and the actual way business is conducted during the life of the contract must demonstrate the 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. Contractors do not get holidays, vacation, and sick leave nor can they retire, as a standard employee would do. Those holidays and leaves should be built into their contracts. Instead of retiring, their contract is considered terminated.

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

Independent Contractor	State Employee
Free from ¹ <i>Direction and Control</i> by the State employee or organization for whom services are being performed.	² <i>Means</i> and ³ <i>Manner</i> of work are controlled by the State.
Performs tasks in their own way or in the way identified in the Statement of Work.	Performs tasks the State's way.
Sets their own hours or in the way identified in the Statement of Work.	Works hours are determined by the State.
Has the right to hire and fire workers.	Is hired and/or fired by the State.
Provides equipment, tools, materials and supplies needed to complete the job.	State provides equipment, tools, materials and supplies.

Independent Contractor	State Employee
Not eligible for employee benefits provided by the State.	Eligible for employee benefits provided by the State.
Liable for performance errors.	State is liable for employee performance errors.
Performs services for several different customers.	Works primarily for the State.
Has, or provides, necessary skills and training to perform the services.	Trained by the State to perform the job.

¹Direction 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.

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

³Manner - 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 subcontractor performs 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 the independent Contractor status.

MONITOR COMPLIANCE

Tools for Monitoring Performance:

- Know your contract like the back of your hand.
- Know what the Contractor's obligations are.
- Communicate 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 the 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 requirements differently than intended?
 - Provide clear and timely communication to the Contractor.
 - The Contractor should work toward timely and adequate resolution to issues, as appropriate.
- Document performance issues and place in CA file.
 - Keep comments objective.
 - Document poor quality or performance issues to help prevent future contract awards to poor performing contractors.
 - Keep the Contracts Officer informed of all performance issues. The Contracts Officer may provide advice on how specific situations should be handled regarding performance issues.
 - Notify the Contractor, in writing, if there are quality or performance issues.
 - This information may be required if the agency decides to terminate a contract for breach. Only your Contracts Officer can send a notice of breach out to the Contractor.
- Notify the Contracts Officer immediately if the Contractor fails or refuses to remedy performance or does not resolve non-compliance issues.

Specific to Goods

- Document receipt of goods only after they have been received.

- If the shipping requirement is FOB destination, the agency has the option of refusing delivery of packages that are visibly damaged. Notify the Contractor immediately.
- Monitor timeliness of product delivery.
- Confirm the items received were what the agency ordered.
- Confirm the quality is acceptable.
- Submit invoices so payments can be timely.

Specific to Services

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

What Happens if You Do Nothing?

It can:

- Cost the agency money.
- Put the agency at risk.
- Violate the CA Policy.
- Spur audit findings.
- Find its way to the press.

DO SOMETHING!

AMEND CONTRACT (OR Purchase Orders)

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

- ODOC 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 a contract 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 the agency's specification requirements.
- Adjust the contract expiration and total contract amount.

Specific to Services

- Amend to add, delete, or revise work or requirements.
- Adjust contract expiration dates and total contract amounts.

Steps for Amending a Contract

- Determine what revisions need to be made to the original contract, including previous amendments.
- Submit a Contract Amendment Request utilizing Smartsheet through the ODOC Hub. Select Divisions, CFO and then select Purchasing & Contracts. For additional instructions review this file: [Smartsheet overview](#). This document is used for:
 - Amended dollar amounts.
 - Revisions in the statement of work.
 - This can be done by providing changes to the current statement of work (identifying revisions or additions using the track changes functionality in Microsoft Word or highlighting the revised areas). This makes it easier for the Contracts Officer to see proposed changes which expedites the process.

- If you have questions on best method to provide revisions, contact your Contracts Officer.
- Revisions in expiration dates, if applicable.
- The CA shall ensure ample time is included for amendment drafting as well as for legal sufficiency review.

LEGAL SUFFICIENCY REVIEW

OAR 137-045-0015 requires ODOC to submit Contracts and Amendments to the Department of Justice 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).

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

INVOICE REVIEW

Upon receipt of an invoice:

- Verify the accuracy of the invoice.
- If required by the Contract, ensure the required back-up information is included, such as reports, forms, etc. to verify the services invoiced were performed.
- Do not pay for goods or services that are not listed in the contract.
- Do not pay for goods or services that have not been received or completed.
- If the invoice doesn't match the contract pricing or format, contact the Contractor, and 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 the terms specified in contract, typically Net 30, but not more than 45 days from receipt of invoice.

NOTE: Keep in mind that changes cannot be made to the pricing after the work has been completed. The Contractor has agreed to the current pricing requirements. In order to make changes to pricing, this needs to be done by amendment, and in advance of work being completed and an invoice being submitted.

Specific to Goods

Match the invoice with the purchase order or other ordering document and packing slip or other documentation that confirms the goods were received.

Specific to Services

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

CONTRACT CLOSEOUT

Upon completion of the contract, verify:

- All required goods or services were received and approved.
 - Products and deliverables met the requirements listed in the contract.
 - Any agency property or information has been returned.
 - All actions related to amendments are completed.
- All outstanding issues and payments are settled.