



## Contract Administration Basics

### Overview

The primary tasks of contract administration are to:

- Maintain control over the contract and ensure that quality services are delivered in a timely manner
- Verify contractor performance for purposes of payment.
- Identify material breach of contract by assessing the difference between contract performance and material nonperformance.
- Determine if corrective action is necessary and take such action if required.
- Develop completion plan for exit requirements for acceptance, final payment, and contract closure.

**Contract administration ensures the contract is satisfactorily performed and the responsibilities of both parties are properly discharged.** Effective contract administration minimizes or eliminates problems and potential claims and disputes.

**Contract administration starts with developing clear, concise performance based statements of work.** The statement of work should be the roadmap for contract administration. Planning for contract administration occurs prior to issuance of the RFx.

**A key factor in successful contract administration is communication.** It is essential for contract administrators to understand the provisions of the purchase document, be able to communicate contract obligations to all parties involved, and maintain control over the contract performance.

**A good contract manager ensures that the contract requirements are satisfied,** that the goods and services are delivered in a timely manner, and that the financial interests of the agency are protected. Contract managers must have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract.

**Agencies must be careful to not impose additional requirements upon the contractor or manage the contractor's operations to the extent that the contractor is relieved of their responsibility to perform.** It is the contractor's responsibility to perform and meet the requirements of the contract. To do so, contractors sometimes need technical direction and approval from agency personnel. Agency personnel must provide this technical direction and approval in a timely and effective manner. All guidance provided to a contractor must be within the scope of the contract.

**The extent of contract administration will not be the same for all contracts.** The level of contract administration necessary should be consistent with the complexity and level of risk of the contract, its term, and dollar value.

*Contract administrators should be sure to consult applicable state and agencies policies related to the performance of their duties.*

## **Contract Administration**

The number of participants in the contract administration process will vary depending on the size, level of risk, and complexity of the contract. A single contract manager and, if needed, support staff, should be identified early in the procurement process. The contract manager roles and responsibilities may include:

- Determining the sequence of activities, dependencies, required or desired outcomes, and acceptable performance levels.
- Developing a timetable and start and end date for each performance component. Include milestones with accompanying timeframes, and monitoring and reporting requirements.
- Monitoring and documenting contractor activity on a specified frequency to identify problem areas.
- Meeting with the contractor on a regular basis to review progress, discuss problems and consider necessary changes.
- Providing access to state facilities, equipment, data, staff, materials and information.
- Contacting other staff as necessary to provide equipment and data.
- Establishing scope of authority, clear lines of communication and reporting and specific individuals who will interact directly with the contractor. Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Defining terms or conditions of default.
- Establishing a procedure, identifying a responsible person and establishing a timeframe for handling noncompliance.
- Establishing a procedure, identifying a responsible person and establishing a timeline for making necessary contract decisions, modifications, and changes.

### **Contract managers should not:**

- Instruct the contractor to start work before the contract is fully executed.
- Change the scope of the contract without using the formal change control process.
- Direct the contractor to perform work that is not specifically described in and funded by the contract;
- Extend the time period of the contract without execution of an approved amendment; and
- Allow the contractor to incur any additional costs over the limit set by the contract.

## **Contract Manager Responsibilities**

The primary responsibilities of the contract manager are:

- Participate in developing the RFx and writing the draft documents.
- Consult with legal counsel to address any legal concerns and/or issues.
- Determine if the contractor's compensation structure is appropriate for the work during RFx development.
- Serve as the point of contact for disseminating the instructions regarding the work to the contractor/supplier.
- Receive and respond to communications between the agency and the contractor.
- Manage, approve, and document any changes to the contract.
- Manage any state property used in contract performance (e.g. computers, workspace).

- Identify and resolve disputes with contractor in a timely manner.
- Implement a quality control/assurance process.
- Maintain appropriate records.
- Document significant events.
- Monitor the contractor's progress and performance to ensure goods and services conform to the contract requirements.
- Exercise state remedies when a contractor's performance is deficient.
- Inspect and approve the final product/services by submitting a written document accepting the deliverables.
- Monitor the budgeting/accounting process to ensure sufficient funds are available
- Verify accuracy of invoices and authorize payments consistent with the contract terms.
- Perform the contract closeout process including ensure the contract file contains all necessary contract documentation.

### **Planning for Contract Administration**

Planning for the administration of a contract begins with the drafting of the statement of work. Procedures for contract administration should be described in the RFX document. Post award, the contract manager must thoroughly understand the components of the RFX and contract, such as:

- Expected outcome measures
- Staging of deliverables
- Total Costs, including any indirect cost allocation
- Risk
- Contract Performance, including when, where, and how the goods and services are to be delivered.
- Acceptance/Rejection Terms, or the conditions of acceptance or rejection.
- Contract Dates, including effective date, completion date, renewal terms, and any additional dates necessary to monitor contract performance.

### **Post Award Conference (Suggested Practice)**

A post award conference is a meeting with the contractor and includes the principals responsible for administering the contract. It is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. The post award conference ensures those involved directly in the contract administration process understand all requirements of contract performance and, therefore, it should be held soon after the contract is awarded. **The post award conference should NOT be used to change the terms of the contract.**

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 may cover the following:

1. **Introduction.** Introduce all participants and identify agency and contractor key personnel.
2. **Scope.** Discuss the scope of the contract (i.e., what the agency is buying). Although this may seem simplistic, a total and complete meeting of the minds on this point will avoid problems during the life of the contract.

3. **Terms.** Summarize contract terms and conditions, particularly any special contract provisions. This can help avoid misunderstandings and allows the contractor to gain a better understanding of the terms prior to beginning work.
4. **Requirements.** Discuss the technical and reporting requirements of the contract. The technical requirements may be discussed as part of the cope. 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.
5. **Administration.** Applicable contract administration procedures, including contract monitoring and progress measurement should be discussed.
6. **Rights.** The rights and obligations of both parties and the contractor performance evaluation procedures should be summarized.
7. **Potential Problems.** Potential contract problem areas and possible solutions should be addressed. Any issues or contract areas that the agency believes may lead to a problem or may be subject to differing interpretations, should be discussed.
8. **Payment.** Invoicing requirements and payment procedures should be discussed, especially if the payment will be made according to milestones achieved by the contractor.
9. **Authority.** The roles and responsibilities of the parties' contract managers, contract administrators, project managers, key personnel leads, 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 should prepare a summary of the meeting for the contract file detailing the topics covered and distribute it to meeting participants. The summary may include areas requiring resolution, a list of participants, those individuals assigned responsibilities for further action and the due dates for those actions.

### **Contract Payment**

Invoices should be reviewed to ensure:

- The contractor is billing only for goods or services received by the agency.
- The goods or services have been inspected and accepted.
- The invoice is correct and complies with the pricing, terms, and conditions of the contract.
- The total payments do not exceed the contract limits.

Client services contracts are unique in that acceptance of a good or service is not an indicator that an invoice should be paid. Problems with client services contracts generally surface after invoices are paid. Contract managers dealing with client services contracts should ensure mechanisms exist to implement remedies contractors for poor performance and that future payments may be withheld until performance improves.

If the agency believes that 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.

Agencies have the responsibility to protect the interests of the agency and **under appropriate circumstances, it may be necessary to withhold payments from contractors.** Circumstances where it may be necessary to withhold payment include, but are not limited to:

- There is a material breach of the contract by the contractor;

- Errors in the invoice;
- Unsupported or undocumented costs;
- To remedy previous overpayments on the same contract; and
- Contractor's performance is non-conforming or unacceptable.

## **Dispute Resolution**

Dispute resolution is covered in the contract terms and conditions. The goal of any dispute resolution process is to resolve all problems before they escalate to the next level. Initial steps to be taken are:

1. Identify the problem - many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.
2. Research facts – the agency should obtain all the information regarding the potential problem from all relevant sources, **including the project manager and the contractor.**
3. Evaluation – the agency should review all of the facts in conjunction with the requirements and terms and conditions of the contract. The agency, in conjunction with the Office of Procurement Services, should then determine the appropriate course of action.

Proper dispute resolution is a core skill of successful contract management. Identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a cure notice procedure or less formal written procedure is essential. **A contract termination is a failure by both parties to a contract.** Termination is the last resort that rarely needs to be done.

## **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. These are described in general below and the specifics of each is outlined in the contract Terms and Conditions.

**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 termination is provided to the contractor in writing and normally specifies if the agency is terminating all or part of the contract, and if only parts of the contract, which parts. A termination date is included. It is customary that the contractor is paid for allowable costs incurred up to the termination, though the agency is usually not 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.

A contract may be **terminated for default** when the agency concludes that the contractor fails to perform, make progress, or in any way breaches the contract. An agency is not required to terminate a contract even though the circumstances permit such action. Agencies may determine that it is in their best interest to pursue other alternatives. Examples of such alternatives include extending the delivery or completion date, allowing the contractor to continue working or working with the contractor's surety to complete the outstanding work.

Prior to terminating a contractor for default, a cure notice should be sent to the contractor. A cure notice is a letter provided to the contractor that provides them a period of time, usually 10 days, to correct or "cure" the deficiency or violation.

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:

- Has the agency done everything within reason to assist the contractor in curing any default?
- The provisions of the contract and applicable regulations.
- The specific contractual failure(s) and the explanation provided for the failures.
- 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 re-soliciting a new contractor.
- 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).
- Availability of funds and/or resources to re-purchase in the event such costs cannot be recovered from the delinquent contractor.

If the contractor's failure to perform is due to the default of a subcontractor, in order to qualify as an excusable cause, the default usually must arise out of causes beyond the control and without the fault or negligence of both the contractor and the subcontractor. Customarily, even if this requirement is met, the cause will not be excusable if the supplies or services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

### **Contract Administration File**

State agencies are required to maintain documentation related to the contracting practice in state government. At a minimum, agencies should retain each contract entered into by the state agency and all contract RFX documents related to the contract and maintain this until the expiration of the records retention period or any issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved, whichever occurs last.

Creating a **master contract file** is considered a recommended practice. The file provides a basis for settling claims and disputes should they arise in administrative or court actions. The contract administration file should be maintained in electronic format and 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 supplier (if they offer valuable historical data);
- The RFX 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/emails 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.

This information should be maintained in a central repository for ease of accessibility and to allow contract managers to reference past or current contracts for useful information relating to a current project.

### **Contract Close Out**

The contract close-out process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations. A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all agency furnished equipment and material have been returned; and final payment has been made to the contractor.

To initiate the close-out process, the agency should 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 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;
- Final payment has been made;
- 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; and
- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.

### **Recording Supplier Performance**

State agencies are not currently required to report supplier performance. However, recommended practices suggest summarizing the supplier's performance for the agency's records to help guide future procurement efforts and risk mitigation strategies.