

POST AWARD CONTRACT MANAGEMENT



POST AWARD CONTRACT MANAGEMENT

- Overview of Types of Contracts and Award Methods
- Understanding the Contract
 - Contents of the Contract
- Contract Performance
 - Designating an agency contract manager, receiving goods or services, monitoring performance, approving payment, evaluation of performance
- Contract Modifications
- Performance Problems, Complaints, and Resolution
 - Contract Termination
 - Disciplinary Action
- Creating and Maintaining Records
- Assignment of Contract or Assignment of Payments



WHAT IS CONTRACT MANAGEMENT?

The management of all actions, after the award of a contract, that must be taken to assure compliance with the contract; e.g., timely delivery, acceptance, payment, closing contract, etc.

Every agency should designate a programmatic contract manager for each contract they administer.



CONTRACT TYPES AND AWARD METHODS

- Competitive Sealed Bidding – KRS 45A.080
- Competitive Negotiation – KRS 45A.085
- Noncompetitive Negotiation – KRS 45A.095
- Small Purchase by state agencies – KRS 45A.100
- Personal Service Contract – KRS 45A.695
- Memorandum of Agreement – KRS 45A.690

***Includes any kind of contract- one-time, Delivery Orders, Master Agreements, PSCs, MOAs

****A payment for a good or service cannot be made without the proper authority!!!



CONTRACT TYPES AND AWARD METHODS

The “contract” will be the official notice of award, which will begin the process of contract management. The vendor must receive an official contract/order from the Commonwealth that authorizes the purchase or notifies them to begin work.



Understanding the Contract

- Contents of a Contract
 - Contract components and order of precedence
 - Solicitation, addenda to solicitation, vendor's response to the solicitation
 - Contract Sections
 - Line items and pricing
 - Scope of work/Specifications
 - Deliverables and payment triggers
 - Negotiated items (where applicable)
 - Contract amount and budget
 - Contract period and renewals
 - Standard Terms and Conditions



Contract Performance

- Awards of state contracts are made in accordance with the evaluation criteria set forth in the solicitation.
- In many instances vendors are awarded points based on their delivery of a product or contract milestones, which may have resulted in their receipt of the award.
- It is essential that the contract manager verifies that the contractor complies with all contractual requirements.

Contract Performance

- What should be considered in managing a contractor's performance?
 - Deliverables (milestones)
 - Quantity of goods to be delivered and/or services to be performed
 - Meets required specifications
 - Schedule
 - Completion of project and implementation
 - Outcomes
 - Were the savings projected from using this new product or service achieved.
 - Budget/financial issues
 - Timeliness of invoicing
 - Necessity of contract modifications
 - Customer service level

Contract Performance

Who manages the contract?

- Commonwealth Buyer from the contract-issuing agency
 - Point of contact for all communications related to the contractual terms and conditions.
 - Renewals, change orders, modifications, or terminations must all come through the Buyer to be valid and enforceable.
- Using agency designated contract manager
 - An employee from the program agency responsible for the performance to be achieved through the contract
 - Responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor.

Contract Performance

As a Contract Manager, How Do I Monitor Performance?

- Communicate initially with the vendor to set expectations and cover the four basic elements of contract performance
 - Contract requirements
 - Scope of work, deliverables
 - Schedule
 - Milestones, completion
 - Budget
 - Contract delivered within original budget. Accuracy, adequacy and timeliness of invoices, invoice processing and payment. Financial reporting if required.
 - Customer service level
 - What level of support and access are you going to expect?
- Reiterate these requirements throughout the life of the contract

Contract Performance

How Do I Monitor Performance (cont.)?

- Review invoices for contract compliance
 - Only approve if product/service billed has been delivered per contract
 - In deliverables based contracts, make sure that milestones have been fully met before remitting payment.
 - Ensure invoice detail is sufficient for a proper audit.
 - For a personal service contract, invoices must be submitted as required by statute, KRS 45A.695(10).

Contract Performance

The contractor must be held accountable to perform at acceptable levels. The quality of work, work schedule/timetable, conflicts, budgets, payments, data, and subcontractors are just a few of the things that should be monitored.

Acceptance and rejection requirements should be clearly outlined in the contract. If the contractor has met the obligations, final acceptance/payment should follow.



Contract Performance

Payments (per FAP 111-45-00)

- An agency
 - shall ensure that adequate funds are available for immediate payment **before** placing an order
 - shall select the appropriate payment method
 - **shall reference the appropriate contract** when making payments in the state's procurement/accounting system
 - shall process an electronic invoice that will liquidate the encumbrance when payment is authorized, for payments against a document that has been entered into, and has encumbered funds within the state's procurement/accounting system
 - shall retain the official invoice from the vendor for the period of time required by the appropriate document retention schedule

Contract Performance

Payments (cont.)

- An agency may make payments using a Procurement Card
 - if exercising small purchase authority
 - if specifically authorized in the terms of the contract
- All bills shall be paid within thirty (30) working days of receipt of goods and services or a vendor's invoice and acceptance.
- Per KRS 45.454 Penalty for late payment
 - An interest penalty of 1% per month after thirty (30) working days following the receipt of the goods or services or vendor's invoice by a purchasing agency.

Contract Performance

THE BUCK STOPS HERE!!

The contract manager is the agency's front line resource to ensure proper performance and that we are paying for what was required in the contract.



CONTRACT MODIFICATIONS



TYPES OF CONTRACT MODIFICATIONS

Contract modifications are generally one of two types:

- **Administrative modifications**
 - Example - change in source of funding
 - Changes which do not affect the terms related to vendor performance
- **Substantive modifications**
 - Example – Changes in scope, quantity, etc.
 - These changes do affect the vendor and therefore require their approval.

CONTRACT MODIFICATIONS

Contract Modifications are governed by statutes, regulations, and policies and procedures:

- KRS 45A.201(1) Issuance of regulations concerning modification and termination of contracts by Commonwealth
- 200 KAR 5:311 Contract modifications
- FAP 111-11-00 Modification of Contracts



CONTRACT MODIFICATIONS

- A Modification shall be used to make corrections or changes to a contract.
- A Modification shall not be used to initiate a major change outside the original scope of the contract.
- For Finance issued contracts, a modification shall not be permitted unless issued by the Finance Cabinet.
 - Agency or vendor can request modification with supporting documentation.

CONTRACT MODIFICATIONS

- An increase in quantity of goods in excess of ten (10) percent shall not be permitted unless authorized in the Solicitation, and
- Unit price increases shall not be permitted except as authorized by the solicitation.
- A Modification shall not be used to increase the dollar amount of a contract established under an agency's small purchase authority to an amount exceeding the small purchase authority limit.

CONTRACT MODIFICATIONS

- Modification to a Personal Service Contract shall be processed in the same manner as the original contract in the state's procurement system.
 - agree to increase or decrease funds,
 - revise the scope of work,
 - extend the time for performance within the current biennium, or
 - any other change.

CONTRACT MODIFICATIONS

- All contract modifications are amendments to contracts and thus become part of the contract.
- All contract modifications must be executed by the buyer or purchasing officer.
- Using agencies may make requests for modifications to the buyer.
- EO1 modification must be made if the originally approved dollar amount is exceeded by more than 15%.

CONTRACT MODIFICATIONS

- Contract modifications should be within the scope of the solicitation and the existing contract
 - Must be consistent with the procurement method

**DEALING WITH
PERFORMANCE
INCLUDING PROBLEMS,
COMPLAINTS &
RESOLUTION**



PERFORMANCE BONDS

KRS 45A.190 Performance bond and payment bond

- A performance bond and a payment bond shall be required for construction contracts > \$40,000
- A performance bond may be required
 - when any contract in an amount in excess of forty thousand dollars (\$40,000) for commodities, supplies, equipment, or services of any kind
 - when a contract for construction services costing forty thousand dollars (\$40,000) or less is proposed.
- The requirement shall be included in the solicitation.

PERFORMANCE BONDS

- The agency contract administrator shall make audits of the performance of contracts upon completion of one-third (1/3) of the contract and upon completion of two-thirds (2/3) of the contract.
- For contracts taking longer than one (1) year to complete, audits of performance shall be conducted at least annually.

PERFORMANCE BONDS

- Before a vendor is released from a performance bond, the agency contract administrator shall:
 - review the audits of performance,
 - make a final performance review,
 - and determine whether the vendor has fully complied with the terms of the contract.
- The using agency head shall:
 - review the documentation from the contract administrator
 - determine whether to recommend to the purchasing agency that the performance bond be released or whether a claim should be made against the performance bond.

See also Policies and Procedures: FAP 111-27-00 AND 200 KAR 5:305.



Receipt and Delivery Issues – FAP 111-41-00

- Delivery may be complete or partial depending on the contract terms.
- Acceptance of late delivery does not waive the agency's rights under the contract.
- Agencies should not be specifically charged for packing materials, crating, containers, etc.
 - Vendor may require the return of containers and provide for a credit so check the terms of the contract.

Late Delivery

- Penalty for Late Delivery
 - Cause for disciplinary action
 - Vendor shall be charged in accordance with the terms and conditions of the contract and the cost shall be deemed a debt owed by the vendor to the Commonwealth of Kentucky.
 - If it creates a critical situation requiring the commodity to be obtained from some other source.
 - The contracting agency may enter the open market and purchase the commodity sought under the contract.
 - Vendor may be required to pay the difference in cost.

Freight Claims:

An agency receiver of delivered goods shall:

- note shortages or apparent damages on the delivering carrier's freight bill and obtain the delivering driver's signature
- **Concealed damages shall be reported to the delivering carrier within seven (7) calendar days after receipt of delivery.**
- If a vendor fails to handle a freight claim or repair or replace damaged materials promptly, the agency shall file an official Performance Evaluation (PE) Document with the Office of Procurement Services.

HANDLING PROBLEMS

Agency Contract manager to discuss problems

- In person or by telephone (document dates and names) or email with vendor contact
- In person or by telephone (document dates and names) or email with vendor management
- By letter
- Notify the purchasing officer of problems and corrective action, or if no resolution. In some agencies, the purchasing officer may be the person to conduct the meeting.

AGENCY RESPONSIBILITY

Purchasing officer

- Contact vendor management, seek agreement on resolution.
- Follow up in writing, ranging from email to letter to formal Vendor Complaint.
- Complete a Performance Evaluation in eMARS to document a vendor complaint.
- Apply liquidated damages if applicable, by invoice or by deduction from payments owed.
- If a term contract is involved, state that the correction and compliance with all other contract terms must continue through the balance of the term of the contract.

POLICY FOR VENDOR COMPLAINTS

FAP 111-42-00 VENDOR COMPLAINTS

For minor problems:

- The agency shall contact the vendor directly and attempt to informally resolve the problem.
- If the vendor does not act promptly and satisfactorily, the using agency shall **immediately** file a Performance Evaluation (PE) Document in eMARS.
- The agency shall then email the appropriate Finance OPS buyer the PE document number.



POLICY FOR VENDOR COMPLAINTS

For major problems:

- The using agency shall **immediately** file a Performance Evaluation (PE) Document in eMARS.
- A Performance Evaluation (PE) Document shall fully document the nature of the problem.
- **An agency shall not allow vendor complaints to accumulate or go unreported until a crisis exists.**
- The agency shall then email the appropriate Finance OPS buyer the PE document number.
- The state agency shall be copied on all communications between the Office of Procurement Services and the vendor.



POLICY FOR VENDOR COMPLAINTS

- If persistent or chronic problems with a given vendor are documented, or the vendor fails to respond, **the Office of Procurement Services may initiate disciplinary action.**
- **Per 200 KAR 5:315.** Section 2, Any contractor determined to have committed any act prohibited, or to have failed to perform any required act may
 - be placed on probation
 - suspended from bidding to the Commonwealth of Kentucky, or
 - a combination of suspension from bidding and probation, for not more than twelve (12) months – twenty-four (24) months.



REGULATION FOR DISCIPLINARY ACTION

Disciplinary action for failure to perform

- Failure to post bid or performance bonds, as required by a solicitation;
- Substitution of commodities;
- Failure to comply with the terms and conditions of a solicitation or contract,
 - including failure to complete performance within the time specified in the contract;
- Failure to replace inferior or defective materials, supplies or equipment

REGULATION FOR DISCIPLINARY ACTION

- Refusal to accept a contract awarded pursuant to the terms of a solicitation
- Falsifying invoices, or making false representations to any state agency or official, about any payment under a contract
- Collusion
- Failure to report, or to pay the Kentucky Department of Revenue any sales or use taxes
- Failure to comply with the prevailing wage law requirements



REGULATION FOR DISCIPLINARY ACTION

- No purchase shall be made by any state agency from a bidder or contractor who has been suspended from bidding.
- All state agencies shall be promptly informed about bidders or contractors suspended from bidding.

CONTRACT TERMINATION



200 KAR 5:312. TERMINATION OF CONTRACTS

Any contractor who is determined to be in breach of any of the terms and conditions of a contract with the Commonwealth of Kentucky, shall be declared in default and the contract may be terminated.

Contracts may be terminated for:

- default by the contractor
- the convenience of the Commonwealth,
- non-appropriation of funds



200 KAR 5:312. Termination for Default

The Commonwealth may terminate a contract because of the contractor's failure to perform its contractual duties.

This can include:

- Failure to perform the contract according to its terms, conditions and specifications;
- Failure to make delivery within the time specified;
- Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services;
- Failure to diligently advance the work under a contract for construction services;
- The filing of a bankruptcy petition by or against the contractor; or
- Actions that endanger the health, safety or welfare of the Commonwealth or its citizens.



200 KAR 5:312. Termination for Default

The Commonwealth shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of termination.



200 KAR 5:312. Termination for Convenience

The Commonwealth may terminate a contract for convenience if it has been determined that termination will be in the Commonwealth's best interests.

- The Commonwealth shall provide the contractor thirty (30) calendar days written notice of termination of the contract.
- the contractor shall have the burden of establishing the amount of compensation to which the contractor believes he is entitled.
- the purchasing officer may negotiate a settlement with the contractor according to terms deemed just and equitable by the purchasing agency.
- the settlement shall be subject to the prior approval of the Secretary of the Finance and Administration Cabinet, or designee.



200 KAR 5:312. Termination for Convenience

Payment

- Payment of the sum agreed to in settlement of a contract terminated for convenience of the Commonwealth shall be made from the same source of funds or account as the original contract.
- The Commonwealth shall not pay interest on the amount due under the settlement.

200 KAR 5:312. Funding Out Provision

The Commonwealth may terminate a contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract.

The contracting agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.



REQUESTS FOR
ASSIGNMENT TO
ALTERNATE PAYEE OR
SUCCESSOR



ASSIGNMENTS

TWO DIFFERENT ISSUES:

1. Assignment of the payment
2. Assignment of the contract to a successor firm

FAP 120-08-07

ASSIGNMENT OF BENEFITS

- A vendor wishing to assign part or all of the proceeds of a contract shall submit to the Finance and Administration Cabinet's Division of Statewide Accounting Services a notarized assignment form.
- An approved assignment shall apply to all future contracts that are renewals of the original contract assigned and shall be effective until the original contract and any renewals expire or are terminated, or until a subsequent assignment of the contract proceeds is approved.

ASSIGNMENTS

- Assignment of the Contract: A contract issued by the Office of Procurement Services is not assignable except with the prior written approval and contract modification by OPS.
- Assignment of the Payment: Monies which become due hereunder are not assignable except with the prior written approval of the director of the Division of Statewide Accounting Services.

ASSIGNMENTS

- Assignment of the Payment or the Contract: the terms and conditions shall apply to and bind the party to whom the Contract is assigned as fully and completely as the Contractor is bound and obligated.
- No assignment, if any, shall operate to release the Contractor from its liability for the prompt and effective performance of its obligations under the Contract.

Documentation



WHAT SHOULD BE KEPT?

A contract manager's file should contain the contract, any amendments, and all reports, complaints, and correspondence materially related to the contract.

DOCUMENT, DOCUMENT, DOCUMENT!

It is impossible to overstate the **importance of documenting activity** during the life of the contract!

It is critical in the resolution of disputes or claims! Any staff who deals with the vendor should maintain records of contract activity, and note problems or unusual occurrences.

You will rely heavily on the documentation to deal with protests and legal disputes, answer open record requests, handle vendor complaints/cancel contracts for failure to perform, etc.



WHAT SHOULD I DOCUMENT?

Regardless of how small or insignificant the matter may seem, problems tend to snowball and can get out of hand. You should:

- keep copies of written correspondence and e-mails with the vendor
- document telephone conversations with the vendor (date, time, vendor representative's name)
- briefly document meetings with vendor representatives

Files and Records – General

- Each agency shall maintain records necessary to support each purchasing transaction.
- See FAP 111-28-00 for additional information.

Wrap - Up



TAKE-AWAYS

- Read and Understand the Contract
- Communicate
- Measure outputs and performance regularly
- Be mindful of timeframes
- Remember your responsibility and expectations
- Document, Document, Document!

GET AHEAD

For next contract:

- First rule: PLAN AHEAD FOR THE NEXT CONTRACTING PROCESS.
- Second rule: PLAN AHEAD FOR THE NEXT CONTRACTING PROCESS.

QUESTIONS

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