



Contract Management

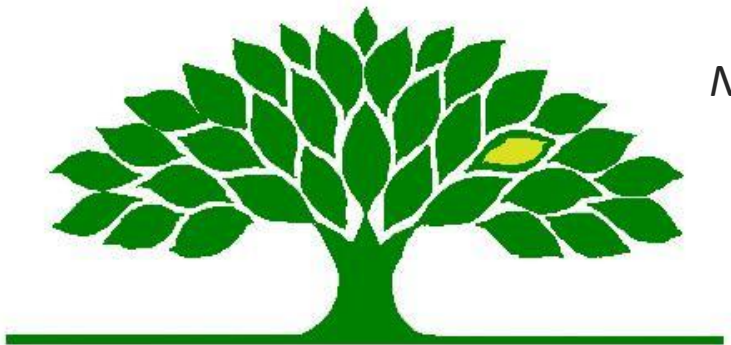
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by

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What is Contract Management?

- Contract Administration
 - Includes consideration of pre-solicitation challenges and procurement
- Contract Management
 - Includes only activity required after contract execution

Goals of Contract Management

- State should receive:
 - High **quality** goods and services sufficient to satisfy needs
 - Products or services received **on time** at proper location
 - Procurement completed **within budget**

Responsibility for Contract Management

- Pick the right person to manage the contract.
This individual is well-served if they participate early in procurement process.
 - Does the individual have the knowledge and skill to manage the contract?
 - Is the contract manager interested and willing to manage the contract?
 - Does the selected individual have time to manage the contract?
 - Does the contract manager have access to all necessary information?
 - Does the contract manager have appropriate level of authority?
- Contract manager should make and retain detailed documentation.
 - Will another individual be able to assume responsibility if needed?

Proactive Approach to Contract Management

- Assure adequate funding
- Understand the contract terms and conditions (T&C)
- Know the Specifications or Scope of Work (SOW)
- Identify risks and prospective ambiguities
- Monitor performance
 - Preliminary preparation for transition of service delivery
 - Starting off on the right foot
 - Continuous oversight
 - Confirmation of receipt of deliverables prior to making payment to vendor

Funding Adequacy

- Conduct a market analysis to know how much goods or services should cost
- When selecting a vendor, make sure they can actually perform for the cost offered to the State
- Make sure that all requirements are set forth in the procurement
 - Avoid the need for add-ons, change orders or contract claims
- Be certain that specifications are subject to a single interpretation
 - Examine procurement docs from perspective of vendor

Anticipate Risks

- Is contract for a fixed price?
 - When is payment to be made?
- Is quantity known or indefinite?
- What happens if manufacturer's costs increase?
- What is contractor's responsibility and intention for oversight of subcontractor's work?
- Are key personnel going to be available?
- Will the State be able to avoid expanding SOW?
 - Will contract modification change pricing?
- Should performance bond be required in addition to bid bond?

Duties of the Contract Manager

- Verify that a contract exists with the vendor that is going to be paid
- Observe service contract performance and review reports
- Identify all deliverable requirements and dates of required delivery
- Confirm that all deliverables have been performed exactly as required
- Check to assure that invoice has not already been paid
- Approve invoice payment only for properly performed deliverables
- If deviation from contract requirements is noted, contract manager:
 - Should notify the contractor in writing of the deviation
 - May reject the deliverable and refuse to remit
 - May accept a suitable alternative subject to supervisory approval

Confirming Deliverables

- Contract Manager must know:
 - What has to be provided
 - When it has to be provided
 - Where it has to be provided
 - What constitutes a material breach of contract
- Milestones set forth in procurement should be achievable
 - Unreasonable expectations = recipe for failure
- Consider alternatives if anticipated deliverable is deficient
- Don't approve invoices prior to confirming deliverables

Inspection of Deliverables

- Receipt is not the same as acceptance.
 - Inspect deliverables promptly upon receipt.
- Does quality of product meet acceptable specification standards?
- Was product delivered on time to correct location?
- Were socio-economic goals satisfied, e.g., MBE?
- Were required reports complete and delivered on time?
- Is invoice accurate?

Monitor Contract Performance Early & Often

- Failure to monitor performance early sends signal to contractor:
 - No one is paying attention to contract performance
 - The State is assuming it is getting what it is paying for
 - Invoices will be paid regardless of accuracy or contract performance
- Aggressive and frequent monitoring of contract also sends signals:
 - Contractor's performance must be high quality and on time
 - Invoices must be accurate

Optional Performance Verification

- Formal periodic assessment of contractor's performance
- Audit by an independent entity to validate and verify performance
- Survey end users to measure their satisfaction
- Use an end user focus group to measure performance
- Issues to address when surveying for performance satisfaction:
 - Who should receive the survey?
 - How should the survey be disseminated?
 - What steps should be taken to encourage participation?
 - What questions will be asked to determine end user satisfaction?
 - How will results be interpreted?
 - What will be done with the survey results?

Common Problems Encountered

- Contract specifications fail to describe accurately what is needed
- Invoicing is different than anticipated and accepted pricing
- Contractor is unable to perform within the timeframe required
- State is double-billed for goods or services already paid for
- Arithmetic or date errors in invoices
- Delivered product is wrong or in unsatisfactory condition
- Change order is required to secure goods or services needed
- Anticipated supply chain is disrupted or becomes limited
- Personality conflicts between State and contractor representatives
- Personnel of either the State or contract are no longer available
- Contractor is unable or otherwise fails and refuses to perform

What happens in the event of a Breach?

- Contract manager should document all deficiencies
 - Written description of defects
 - Photographic evidence of defects
 - Secondary confirmation of defects
- Contractor should be notified of deficiencies **in writing**
 - Request that contractor acknowledge receipt of notification
 - Contract Manager should **not** remain silent!
- Consider: Will secured documentary proof suffice in the event of a contract claim?

Remedies in the event of breach of contract

- Meeting with the contractor to resolve issues
- Modification of the contract
- Work suspension
- Nonpayment of invoices upon notification to contractor
- Allowance of remediation through a Corrective Action Plan (CAP)
- Imposition of Service Level Assessments (SLAs)/Liquidated Damages (LDs)
- Withholding of retainage

- State has latitude to terminate a contract:
 - For cause
 - For convenience

COMAR 21.02.07.02

“State agencies shall determine before approval and transmittal of any

invoice ...the following:

A. That the contract has been satisfied pursuant to:

- (1) Its terms and conditions, particularly the payment and performance schedule...”

In other words, don't pay for goods or services not delivered as promised.

State is in the driver's seat only until payment is made.

Provisions in Solicitation

“The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the contractor brings itself into compliance with the Contract.”

Vendors are strongly motivated to resolve issues in order to be paid.

Follow-up

- Were the goals of the procurement achieved?
 - If not, what changes might be made for the next procurement?
- Did unanticipated issues arise?
 - If so, should changes be made to the next procurement?
- Could procurement have been done better?
 - Faster? With less work effort? How?
- Other lessons learned?
- Note the procurement file with suggestions for improvement.
 - Also note identity and concerns of interested vendors.

Q&A

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