



TEXAS SOUTHERN UNIVERSITY



CONTRACT MONITORING GUIDE

NOVEMBER 2017



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INTRODCUTION

The purpose of the Contract Monitoring Guide is to provide the TSU family guidance on contract monitoring processes and practices and to meet the requirements of Senate Bill 20. Throughout this guide, the term Contract originator or Contract Administrator are used interchangeably.

Planning for contract monitoring should begin even before issuance of the solicitation. A good contract administrator ensures the contract requirements are satisfied, the goods and services are delivered in a timely manner, the financial interests of TSU are protected, and consults with general counsel where warranted.

The information in this Guide is intended to provide flexibility, as appropriate, to ensure each contract gets the tracking and monitoring that serves the best interest of TSU. The Guide provides a framework that TSU must use to make and record contract administration decisions over the life of the contract.

The guide is designed to comply with existing statutory contracting requirements and TSU's rules, policies and procedures. The integrity of the university demands that goods and services be furnished, received, invoiced and paid as specified in the contract. Contract monitoring includes all actions taken by TSU relative to a specific contract after the award is made, as outlined in this guide.

After issuance of a contract document, the initiating department is responsible for contract monitoring to assure that the services or goods are provided in accordance with the terms of the contract. Planning and proactive management of a contract are crucial to effective contract monitoring. Vendor noncompliance and other relevant experiences related to contract performance are to be reported on a Vendor Performance Form.

Questions concerning this guide and the contract monitoring process should be directed to the following individuals:

Executive Director of Procurement Services
713-313-1962

Director Office of Institutional Compliance
713-313-6823



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GLOSSARY

Commodity: Any equipment, materials or supplies. Also referred to in this guide as goods and items.

Contract Monitoring: Contract monitoring begins after award of the contract. Its purpose is to assure that the contractor's and TSU's total performance is in accordance with the terms and conditions of the contractual agreement.

Contract Administrator: Monitors progress to verify that services are performed as required and that all deadlines are being met. They may also establish reporting requirements that need to be followed by the participants.

Corrective Action Plan: Corrective action refers to any activity initiated for the purpose of altering the course of a task or project that may have lost focus or somehow deviated from the pre-specified direction it was intended to take.

Enhanced Contract Monitoring: An increased level of monitoring, beyond the regular monitoring for contracts greater than \$1 million dollars. Such increased monitoring may include, but is not limited to: compliance with financial provisions and delivery schedules; corrective action plans; liquidated damages assessed or collected and verification of the accuracy and the delivery time of goods or services based on the information provided by the vendor.

Fixed Price Contracts: Fixed price contracts are generally used when an organization can clearly specify what to buy and that there are not uncertainties anticipated during the performance of the assignment. The total cost of the contract is specified when the contract is awarded and is based on the initial specification of the Scope of Work (SOW). There are not adjustments to price based on the contractor's performance. This type of pricing provides the greatest incentive for cost control because the contractor keeps any savings realized.

Installment Purchase: A contract in which TSU established periodic payments are applied to fulfill the payment obligations for ownership of the commodity, used when ownership of commodity at time of possession is intended.

Invitation To Bids (ITB): A formal solicitation document, usually in a standardized format. Normally used for larger, advertised competitive procurements for commodities.

Lease: A contract conveying from one to another the use of a commodity for a designated period of time in return for established periodic payments. Does not contain an option, or an obligation to purchase.

Lease-Purchase: A contract conveying from one to another use of a commodity for a designated period of time in return for established periodic payments, with an option or obligation to purchase the commodity. Used when outright ownership is uncertain or when it is the intent to delay ownership.

Milestone Payments: Are performed sequentially and only in the order listed. No work shall be accepted, nor will it be paid for, unless and until all prior events have been successfully completed. Written official notice advising of the successful completion and approval for payment of an event shall establish the completion date for that event and shall constitute permission for the Contractor to begin the next event in the sequence. The Contractor and TSU agree that payments to be made for this contract shall be based upon satisfactory completion by the Contractor of the milestones established in the schedule.

Modification: Often alters one or more substantive terms of the contract. Because substantive changes can cause significant changes to the rights and responsibilities of one or both parties, bilateral execution serves as a protection mechanism so that both parties are fully aware of the nature of the change. Common substantive change usually impacts the contract term, work statement (specifications) method of delivery, place of delivery, and cost or terms and conditions. A change clause should be included in all contracts to establish the boundaries of contract modifications that can be made.

Offer: This term may refer to a proposal, quote or bid submitted in response to a Request for Proposal, Request for Quotation, Invitation to Bid, or Negotiation.

Offeror: Company, firm, corporation, partnership, individual, etc. submitting a response to a solicitation document or in response to a negotiation.

Open Market Contract: A contract for the purchase of a commodity or contractual service not covered by a term contract, usually for a definite quantity on a single order. Contracts awarded as a result of a public advertised competitive solicitation.

Partial Payments: Payment amount that is less than the due amount, is a part payment for an unfinished work.



Prompt Payment Discounts: Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will be considered in the award of the contract and as a factor to aid in resolving cases of identical prices.

Purchase: The solicitation of, and acceptance of, an offer to (1) provide a service (2) lease or rent a commodity, (3) sell a commodity outright, or (4) sell a commodity through a lease purchase or installment purchase contract.

Purchase Order: A document issued by TSU to a provider of products or services, indicating what good/service is ordered, how much is needed, and what it will cost. A PO is a legal offer to buy products and services.

Rental: A contract for the right to use a commodity or product for a period of time, usually with payments made at intervals over the period of use and normally providing for short notice of cancellation.

Request For Proposal (RFP): A solicitation document. This document, or the ITB, is required to be used for competitive procurements that exceed \$25,000. Normally used for larger, advertised competitive procurements for services. It is an alternate acquisition method to the IFB.

Request For Quotation (RFQ): A solicitation document. Normally used for smaller, non-advertised competitive procurements less than \$25,000.

Solicitation Document: A written Request for Quotation, Request for Proposal, Request for Offeror, Competitive Sealed Proposal, or an Invitation to Bid.

Time and Materials: Time and materials contracts provide the contractor with a fixed rate for each hour of labor plus the cost of materials. If no materials are involved, this is referred to as "labor hour". A contract ceiling price or not-to-exceed amount is usually established to control cost. Time and Material pricing is generally used to establish suppliers and prices for a given commodity or a group of commodities, for a period of time without guaranteed quantities being specified.

Term Contract: A contract generally intended to cover all normal requirements for a commodity or contractual service for a specified period of time based on estimated quantities only. This may be referred to as an indefinite quantity or requirement contract

PRE-CONTRACT CONSIDERATIONS

1. What is a Contract

For the purposes of this Guide, a contract is an agreement between two or more parties that creates an obligation to perform (or not perform) a particular action. It is an agreement enforceable by law. In addition to creating obligations by and to external parties (vendors), a written contract is a record that serves as an internal check and balance permitting reviews of procurement activity for improper relationships, fraud, conflict of interest issues, and regulatory requirements.

A legally enforceable written contract requires:

- 1.1 An Offer (specific material/service, specifications and deliverables)
- 1.2 An Acceptance
- 1.3 Consideration (the value received and given)
- 1.4. Execution by competent parties with the authority to bind the company

2. Contract Formation

Contract formation is a series of pre-award procurement activities between TSU and a contractor that results in a contract. Other terms interchangeable are pre-solicitation and contract development phase. The contract formation activities serve as the preamble to these internal activities that will follow once the contract is executed.

The Procurement Services Department offers value to the contract formation or pre-award process and plays a hands-on role in the entire contract formation phase. During this process, Procurement Services can assist in developing specific contract goals and provide the internal customer (end user) with contract formation tools such as specifications, price, delivery types, selection and evaluation criteria, contract templates, forms, and general types of contracts that contain contract clauses designed to effectively minimize and manage contract risks.

Excellence in contract monitoring during the contract formation or pre-solicitation phase begins with specifying the need, establishing contract goals, identifying potential risk when using procurement tools to develop specifications and a contract that effectively addresses the established objectives. Components that make up the pre-solicitation process include the pre-award orientation or pre-meeting with applicable program and contracting officials prior to the post award orientation conference so that there is a clear understanding of their specific responsibilities and restrictions in administering the contract. The time spent on

contract formation will reduce the amount of time spent administering contracts. It will also aid in the development of a plan for monitoring contract performance.

Contract monitoring points include, but are not limited to: deliverables, timetables, payment triggers, quality of deliverables and the information and reports the vendor must produce so performance can be monitored. The contract cannot be properly monitored and ENFORCED unless these points are incorporated into the contract at contract construction.

3. Scope of Work, Intent of Contract, Duration, etc.

The awarded supplier will receive either a signed contract or a purchase order (or both) from TSU. The purchase order and/or signed contract will include the terms, conditions and specifications governing the supplier's contract performance. No supplier is authorized to begin contract performance prior to receiving a signed contract or purchase order from TSU. Any required bonds (payment, performance, fidelity, insurance certification, etc.) or letters of credit must also be promptly submitted to TSU in accordance with the terms of the contract.

The supplier's receipt of a purchase order for a one-time purchase, a lease or installment purchase, or a fixed quantity contract, authorizes shipment in accordance with its terms. The supplier's receipt of a Notice of Award from TSU establishing a term contract does not authorize any shipment. Shipment against term contracts is only authorized by the supplier's receipt of a purchase order from the state entity. The purchase order number or contract number must be shown on all bills of lading, packing slips, back orders, invoices, and other transactional documents.

4. Managing Contract Performance

Tracking the performance of the contractor is the principal function of proper contract monitoring and administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and TSU to be aware of and address any problems or issues promptly.

Not every contract will require the same level of monitoring. All contracts should be reviewed periodically within the contract term taking into account size or contract value, associated risk, sensitivity (contracts receiving high volume of public scrutiny), and type of contract and services being provided. Small dollar value or less complex contracts may require minimum monitoring. However, that does not preclude the possibility of more

detailed monitoring if deemed necessary. Conversely, large dollar contracts may not require extensive monitoring if the items or services purchased are not complex and TSU is comfortable with the contractor's performance and the level of risk associated with the contract. When assessing risks to determine the level of monitoring, the identified risks should be linked to the monitoring plan.

This function is separate from, but closely related to, the role of project manager. Typically, a project manager plans and organizes those resources required by one or more parties to a project, and coordinating use of those resources, as needed, for completion of the project. More complex projects may involve multiple contracts, and simple projects may not have a separate project manager assigned.

5. Contract Administrator Responsibilities

Primary responsibilities of the Contract Administrator include, but are not limited to:

- 5.1 Understanding the contract terms and conditions including the scope and performance indicators.
- 5.2 Managing any changes to the contract (change orders, amendments, addendums, renewals, extensions, terminations, etc.)
- 5.3 Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements.
- 5.4 Receiving and responding to communications between TSU and the contractor. Coordinating and scheduling meetings, if needed. Monitoring contract sales data, if appropriate.
- 5.5 Participating in resolving disputes in a timely manner.
- 5.6 Exercising contractual remedies, as appropriate, when a contractor's performance is deficient.
- 5.7 Ensuring Vendor Performance Form is completed and filed appropriately.
- 5.8 If the value of the contract is greater than \$14,000 for Consultants & Professional Services and Construction Services or \$50,000 for all others, a copy must be submitted to the Director of Materials Management who is responsible for submitting details to the State's Legislative Budget Board.
- 5.9 Monitoring invoice payment reports from accounting for timeliness and accuracy.
- 5.10 Documenting all actions taken regarding the contract and maintain such documentation as part of the official contract file.
- 5.11 Closing out the contract file.

The Contract Administrator shall avoid the following:



- 5.12 Asking the contractor (inappropriately or unknowingly) to perform outside of the scope of work specified in the contract without adequate documents agreed to by both parties.
- 5.13 Awarding, agreeing to, modifying, increasing the scope and dollar value of, or signing any contract directing change without adequate documents agreed to by both parties.
- 5.14 Issuing instructions to a contractor to start or stop work except in an emergency situation without adequate written documents.
- 5.15 Including personal opinions, in any correspondence, including emails.

It is strongly encouraged to have separation of duties between project management and contract administration. However, a person may be responsible for a dual role.

6. Risk Assessment

Limited resources require the use of risk assessment to assess contract performance because there is not sufficient time to oversee all aspects of a contract. An effective risk assessment model will help focus monitoring resources on contractors or performance activities with the highest risk of noncompliance. First, identify risk factors. Risk factors are indicators that help evaluate the risk of the contract or project objectives not being achieved. **General risk factors to be considered in development of the contract may include, but are not limited to:**

- 6.1 The contractor's past performance (and past performance of similar contractors).
- 6.2 The impact of poor contractor performance on TSU services.
- 6.3 Turnover in key contractor personnel.
- 6.4 Independent audit coverage (OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations").
- 6.5 Prior complaints or inquiries.
- 6.6 The dollar amount of the contract.
- 6.7 Significant problems with payment requests.
- 6.8 Results of any desk reviews or expenditure document reviews.
- 6.9 Results of performance reviews completed by other agencies or divisions within TSU that contract with the same contractor.
- 6.10 The experience level of the contractor with the type of work to be performed.
- 6.11 Any requirements not met shall be addressed, documented and maintained in the contract administration file.

Risk factors during contract performance might include, for example:

- 6.12 Multiple schedule delays or slow deliveries.



- 6.13 Frequent personnel changes or juggling of work assignments.
- 6.14 Vague or evasive responses to inquiries and status requests.
- 6.15 Lack of progress on completing deliverable on which other parts of a project depend.
- 6.16 Requests for milestone payments without finalizing deliverables.
- 6.17 Downplaying the seriousness of problems and their impact on project completion.
- 6.18 Lack of preparation or planning for upcoming requirements or activities.
- 6.19 Failure to return calls or respond to information requests.

7. Determining What to Monitor

When assigned to monitor a contract, one should immediately review the statement of work and other contract terms, including contractor compliance requirements. All of these requirements are deliverables which the contractor and TSU agreed to when the contract was executed or the purchase order was issued. Design the monitoring plan to focus on items that are most important. Generally, this means to focus the monitoring on the outputs and outcomes that result from the contract.

The extent of contract monitoring will not be the same for all contracts. The level of contract monitoring should be consistent with the complexity and level of risk of the contract, its term, and dollar value. Early in the procurement process, identify staff to participate in contract monitoring. Contract monitoring activities may include:

- 7.1 Determining the sequence of activities, dependencies, required outcomes, and acceptable performance levels.
- 7.2 Developing a plan, including start and end dates for each performance component, including milestones with accompanying timeframes, monitoring and reporting requirements.
- 7.3 Establishing clear lines of communication, reporting specific individuals who may interact directly with the contractor.
- 7.4 Providing access to state facilities, equipment, data, staff, materials and information. Monitoring contractor activity on a specified frequency to identify problem areas.
- 7.5 Communicating with the contractor on a regular basis to review progress, discuss problems and necessary changes.
- 7.6 Addressing actual problems and resolutions.
- 7.7 Maintaining documentation of monitoring activities and resolution of identified defaults.
- 7.8 Verifying receipt of specified services, goods and reports.



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- 7.9 Verifying that all performance measures and reports are completed in a satisfactory manner in accordance with the contract.
- 7.10 Financial provisions.
- 7.11 Corrective action plans.
- 7.12 Liquidated damages assessed or collected.
- 7.13 Deliver schedules.

Contract Monitoring Checklist is located at <http://www.tsu.edu/about/administration/forms/procurement-services.php>



8. Developing a Contract Monitoring Plan

A Contract Monitoring & Administration Plan must be used by the contract administrator with each of its contracts and may be adapted, as needed. The use of this Plan helps to assure proper management of the contract and provides a record that professional management practices were used in the monitoring and administration of the contract. This Plan may include but is not limited to the following: a contract administration file, contract kickoff meeting, performance monitoring, reporting, contract payments and payment approval process.

Contract Monitoring & Administration Plan is located at:

<http://www.tsu.edu/about/administration/forms/procurement-services.php>

9. Establishing and Maintaining a Contract Administration File

It is the responsibility of each Contract Administrator to ensure all contractual obligations are met and contract monitoring is documented. Keeping a complete master contract administration file is critical and must be maintained by the department. This file will provide a basis for settling claims and disputes should they arise in administrative or court actions. Throughout the life of the contract, the contract administration file will provide a single, easily accessed repository for those documents related to contract duties and performance, and it should contain such things as:

- 9.1 A copy of the current contract and all modifications.
- 9.2 A copy of all specifications, drawings or manuals incorporated into the contract by reference.
- 9.3 A reference list or a list of prior contracts with this specific vendor (if they offer valuable historical data).
- 9.4 The solicitation document, the contractor's response, evaluation determination, and the notice of award document.
- 9.5 A list of contractor submittal requirements.
- 9.6 A list of university furnished property or services.
- 9.7 A list of all information furnished to the contractor.
- 9.8 A copy of the post-award conference summary, if conducted.
- 9.9 A schedule of compliance review and internal correspondence, if applicable.
- 9.10 A copy of all general correspondence related to the contract.
- 9.11 The originals of all contractor data or report submittals.
- 9.12 A copy of all routine reports required by the contract such as sales reports, pricing schedules, approval requests, and inspection reports.
- 9.13 A copy of all notices to proceed, to stop work, to correct deficiencies, or to change orders.
- 9.14 A copy of all letters of approval pertaining to such matters as materials, the contractor's



- quality control program, prospective employees, and work schedules.
- 9.15 The records/minutes of all meetings, both internal and external, including sign-in sheets and agendas.
 - 9.16 A copy of all monitoring reports: contract administrator's status to supervisor, site visits, desk reviews, and expenditure documentation reviews.
 - 9.17 A copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments.
 - 9.18 A copy of all backup documentation for contractor payment or progress payment; and copies of any audits.

NOTE: Sometimes in advance of providing the contract file to an individual making a public records request, the file will need redaction of confidential material. Refer to the Office of General Counsel for legal guidance.

The Office of General Counsel maintains a copy of all contracts in a central repository. This allows contract administrators to reference past or current contracts for useful information relating to a current project.

In accordance with the State of Texas Records Retention Schedules, documentation shall be retained for a minimum of 7 years after the expiration date of the contract. Some contracts require a longer retention period. For details, see the schedule located at:
<https://www.tsl.texas.gov/slr/recordspubs/rrs4.html>

In addition to Texas record retention, TSU contract administrator shall adhere to any federal record retention requirements, if applicable, and, shall include written documentation of contract monitoring procedures indicated in this guide.

Use the Contract File Checklist to establish your contract file. Contents should include but are not limited to items on the list.

Contract File Checklist is located at:
<http://www.tsu.edu/about/administration/forms/procurement-services.php>

10. Contract Kickoff Meeting

A *contract kickoff (post-award or work plan) meeting*, if performance includes multiple activities or covers a span of time, is held prior to the work start date with representatives of both parties (both supplier and the university) in attendance. At a minimum, Contract Administrator of both parties must be present. This *meeting* is an orientation for the supplier to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of the parties. It is an opportunity to clarify and resolve any potential misunderstandings. For small-value contracts or those of very short duration, a face-to-face meeting may not be necessary, but at least a telephone conference should be held with an opportunity for questions and clarifications.

The contract administrator should establish the time and place of the meeting, prepare an agenda, and



notify all appropriate personnel. All instructions given to a supplier at the meeting must be within the scope of the contract. University personnel must not impose additional requirements upon the supplier or make changes that are outside the scope of the contract. After the contract kickoff meeting, the Contract Administrator should provide minutes of the meeting detailing the items covered. The minutes should include any areas or points requiring clarification, a list of participants, and any assigned responsibilities for further action and due dates for those actions. Copies of the minutes should be distributed to all participants and must be maintained as part of the state entity's contract file. The minutes should be appropriate to the complexity and value of the contract. In cases where the contents are brief, the minutes can be informal and included in the body of a letter or e-mail.

Contract Kickoff Meeting Checklist is located at:
<http://www.tsu.edu/about/administration/forms/procurement-services.php>

11. Vendor Performance and Enhanced Contract Monitoring

In accordance with Texas Government Code, 2262.055 and 34 Texas Administration Code, 20.108, the university shall rate vendor performance and report finding to the state. The statute does not apply to contracts funded by grants and contracts with a value less than \$25,000. The Contract Administrator is responsible for monitoring the *vendor's performance*. The *vendor's performance* (both satisfactory and non-satisfactory) must be documented. Vendor performance will be documented in one of two formats.

The Office of Institutional Compliance (OIC) maintains records of active contracts and their expiration dates. Every quarter, the OIC notifies contract administrators of contracts that have expired and forwards them a Vendor Performance Form to complete. Contract administrators are required to complete the form and return it promptly to the OIC. Upon receipt of the completed form, the OIC will report the finding to the state.

Contracts with a value exceeding \$1,000,000 and/or multiple years requires enhance monitoring procedures. The Contract Administrator shall use the Vendor Performance Form as one of the various tools to document performance throughout the contract term. The completed form shall be maintained in the Contract Administration File. All performance problems or issues must be documented and should be addressed quickly, before the issues grow.

Vendor Performance Form is located at <http://www.tsu.edu/about/administration/institutional-compliance/pdfs/vendor-performance-form-tsu-oic-11162015.pdf>

TSU's Contract Management Office or the Director of Materials Management is responsible for reporting to Board of Regents any serious issue or risk that is identified with respect to a



contract monitored with a value exceeding \$1,000,000. Appendixes A-F are the required forms to be utilized for Enhanced Contract Monitoring. The Contract Administrator is responsible for periodically reporting to the Director of Materials Management the vendor performance status.

12. Monitoring Review Types

There are different types of monitoring available, including but not limited to: site visit, desk review, expenditure document review and monitoring by third parties. Depending on the type and scope of the contract one or more methods, or a combination of various elements, may be used.

- 12.1 Site Visit: (Full and limited scope) *Full scope* site visits are typically scheduled visits to the contractor's place of business/physical location of service provided. They are based on a risk assessment of the contract and cover a broad range of contract compliance and performance requirements. *Limited scope* site visits typically focus on a particular problem.
- 12.2 Desk Review: Typically, these are university reviews of reports submitted by the contractor to TSU. The contract administrator shall review actual performance against the contract requirements, actual expenditures to the approved budget, and current reporting period to prior periods.
- 12.3 Expenditure Document Review: These are reviews of contractor invoices and expenditure draw requests to determine if the rates and services are the same as allowed by the contract. Determine if the supporting documents such as cost reports, third party receipts for expenses, detailed client information, etc. adequately support the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting document is insufficient to support the request, then you must report this to the appropriate management level for a decision on the appropriate response and, if then appropriate, begin the dispute resolution process as outlined in this guide.
- 12.4 Monitoring by Third Parties: In some instances, the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For example, in the case of a construction contract, the task of ensuring progress in accordance with the contract may be performed by a project management firm. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with TSU staff.

13. Establish Expectations

Establish expectations so that individuals responsible for contract management and the contractors all

understand what will be overseen and the criteria used to evaluate contractor performance.

13.1 A part of establishing expectations is determining when status reports for the contract will be due and to whom the reports will be sent. A best practice for larger projects is to have the first monitoring status report about thirty (30) days after the start of the work. This will either help ensure that everything is going well or uncover any issues to be resolved. Additional status reports are to be made by the contract administrator throughout the contract period with a frequency based on the risks associated with the contract. For more complex contracts, status reports or meetings might be held every week.

13.2 Using Monitoring Review Results

Monitoring reviews, audits and investigations must be followed up on a routine basis to:

- Ensure corrective actions have been taken
- Identify common problem areas that might require training
- Improve future contracts

University will design a system that includes criteria to be used to evaluate contract performance and defined follow-up actions as needed for each contract. The goal of follow-up is to bring the contractor back into compliance with the contract requirements. Follow-up is essential as the problem will not correct itself simply because it has been identified and included in the monitoring report. Monitoring results should also be used to improve the contract requirements for future contracts. If there are unnecessary restrictions or insufficient restrictions, this is the time to make a note of the recommended changes so future contracts can incorporate the changes.

14. Reporting

Reporting includes both contract administrator reports to management and the contractor's reports to the contract administrator. There are generally two (2) categories of reports: status reports and activity reports. Both types of reporting serve useful functions:

14.1 Status Reports - Describe the progress of the work. The content of the status report will be consistent with and track the organizational structure of the statement of work, i.e. phases, segments, deliverables and products. A status report describes what work is complete and what work is pending. The status of work is then compared and contrasted against the contract schedule. Only work that has been verified as completed or accepted is to be categorized as complete. If there are any unresolved issues that TSU is contractually obligated to resolve, those issues are to be included in the status report and a resolution requested. If the scope of work has changed during the contract (by written contract amendment), insist that status reports track the original contract schedule, not a revised contract schedule, unless the amendment provides for



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a revised contract schedule. If status is tracked against a revised schedule, there is a risk that the schedule will continually change and the status report will be rendered meaningless.

- 14.2 If the contract does not provide for periodic status reports, TSU must ensure that sufficient progress is being made by the contractor. This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.
- 14.3 Activity Reports - Describe any activity on the project; project activity is not the same as progress. A project may have a great deal of activity without making substantive progress. On the other hand, activity reporting can be a core feature of contract management. For example, a contractor payment in an outsourcing contract may be based on the number of completed transactions. In this example, activity reporting is critical to contract administration

15. Contract Payments

15.1 Payment Terms

The costs billed by the contractor must be in accordance with the contract payment terms. Total payments must not exceed the contract limits. Standard payment terms are Net 30 days after receipt of correct invoice or acceptance of goods, whichever is later. TSU is responsible for all payments to the contractor under the contract.

15.2 Availability of Funds

Any and all payments to the contractor are dependent upon and subject to the availability of funds to TSU. Authorized payments should be consistent with the contract terms, and any deviation requires a contract amendment.

16. Payment Approval Process

- 16.1 The contract should specify payment model (e.g. per deliverable, periodic payments, on final acceptance, etc.), payment rate, reimbursement description and amount, if any, and the invoicing process.
- 16.2 The costs billed by the contractor must be in accordance with the contract payment terms and TSU payment policy and procedures.
- 16.3 Invoices must be reviewed to ensure that the contractor's billing coincides with the contract's progress. This requires the contractor's progress to be measurable. Invoices submitted, are insufficient indicators of the contractor's progress.
- 16.4 If TSU 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 TSU's satisfaction with the contractor's progress.

- 16.5 Invoices must be approved prior to payment. The invoice should be reviewed to ensure:
- The contractor is billing only for goods or services received by TSU.
 - The goods or services have been accepted.
 - The invoice is correct and complies with the terms and conditions of the contract as to identity of the charges and any limits on rates or amounts.
 - The total payments do not exceed the contract limits.
- 16.6 Services contracts are unique in that acceptance of a good or service is not necessarily an indicator that an invoice should be paid. Problems with services contracts generally surface after invoices are paid. Contract administrators dealing with services contracts should ensure mechanisms exist to incentivize contractors against poor performance when possible and that future payments may be withheld until performance improves.

17. Common Types of Payment (Methods)

- 17.1 **Installment Payments:** A contract in which TSU's established periodic payments are applied to fulfill the payment obligations for ownership of the commodity. It is used when ownership of commodity at time of possession is intended.
- 17.2 **Fixed Price:** Fixed price contracts are generally used when an organization can clearly specify what to buy and that there are no uncertainties anticipated during the performance of the assignment. The total cost of the contract is specified when the contract is awarded and is based on the initial specification of the Scope of Work (SOW). There are no adjustments to price based on the contractor's performance.
- 17.3 **Milestone Payments:** Are performed sequentially, and only in the order listed. No work shall be accepted, nor will it be paid for, unless and until all prior events have been successfully completed. Written official notice advising of the successful completion and approval for payment of an event shall establish the completion date for that event and shall constitute permission for the Contractor to begin the next event in the sequence. The Contractor and TSU agree that payments to be made for this contract shall be based upon satisfactory completion by the Contractor of the milestones established in the schedule.



- 17.4 Partial Payments: Payment amount that is less than the total amount due. It may be a partial payment for unfinished work.
- 17.5 Time & Material: Time and materials contracts provide the contractor with a fixed rate for each hour of labor plus the cost of materials. If no materials are involved, this is referred to as "labor hour". A contract ceiling price or not-to-exceed amount is usually established to control cost. **In no event may a cost plus percentage of cost payment method be used, unless the exact amount of the cost component is known and included in the contract.**
- 17.6 Percentage of Amount Recovered: In certain cases, when services to recover funds are involved, payment may be calculated as a percentage of the amount recovered.

CORRECTIVE ACTION PLAN

18. Developing Corrective Action (CAP)

18.1 This section documents the process to initiate, develop, review, execute and close-out a (CAP) to Address Contract Requirements Deficiencies. It is intended to be used by the contact administrator, and by contractors who have received notification from the contact administrator requiring development of a CAP.

A CAP is one of several tools available to the contact administrator to help ensure a contractor fulfills their responsibilities under the contract and to ensure the project is completed, or services provided, in the required manner. Contract provisions, the deficiencies identified, and the nature of the circumstances will help the contact administrator determine whether a CAP or other remedial option under the contract is appropriate.

18.1.1 The Contractor's role is to:

- Initiate a CAP upon determination of its appropriateness based on the contract provisions and circumstances
- Review and accept / reject the CAP provided by the contractor
- Monitor the contractor's completion of the action items contained in the CAP
- Determine if the outcomes of the actions implemented are acceptable

18.1.2 The contractor's role is to:

- Develop a CAP for approval by the contract administrator
- Execute the approved CAP
- Achieve the expected outcomes

18.1.3 Examples when a CAP should be considered (not limited to):

- CAP should be considered when contracted services deviate from, or deficiencies are identified with respect to, the requirements specified in the contract
- CAP should be considered when established performance measures are not met

18.1.4 When a CAP should not be considered (not limited to):

- CAP should not be used as a substitute for normal project management and oversight activities generally provided for under the contract

- CAP should not be used to address shortcomings identified during deliverable acceptance review where the contract contains separate provisions under these circumstances (payment only occurs after deliverable acceptance)

18.2 Objectives & Benefits

The general objectives for the Process for Corrective Action Plan (CAP) to Address Contract Requirements Deficiencies are to:

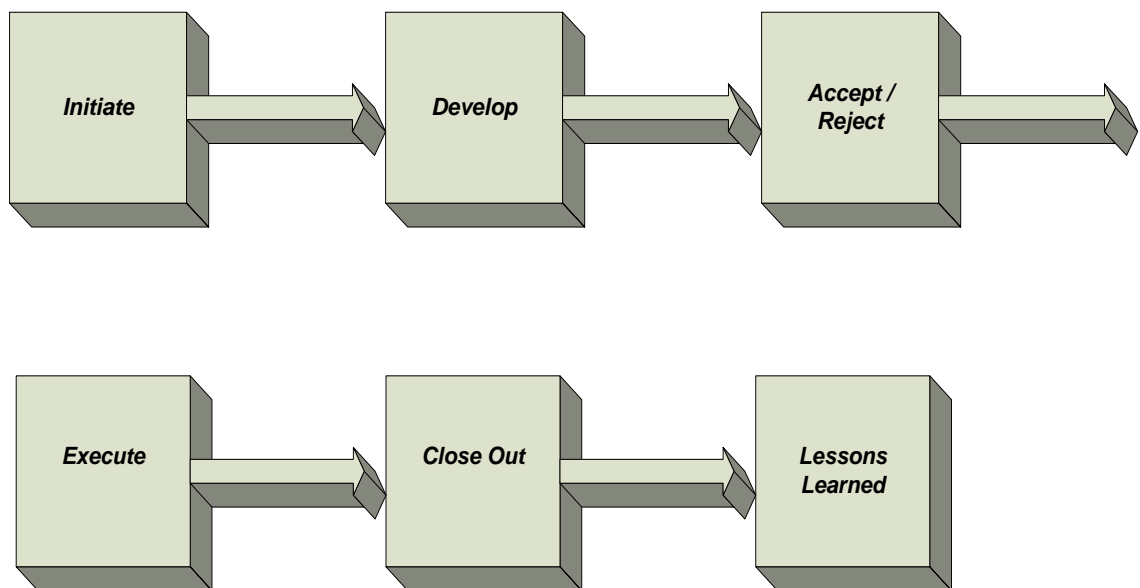
- Provide the Department with a process standard for correcting deficiencies of contract requirements
- Develop a common set of guidelines and templates to be used for the CAP process
- Provide a process to initiate, develop, review, execute and close-out a CAP

18.2.1 The general benefits of a CAP process are to:

- Clearly identify, agree upon, manage, and monitor actions to remediate contract deficiencies
- Establish transparency for follow-through and follow-up on CAP action items
- Follow a standardized process for reviewing and approving CAP remediation activities
- Determine root causes of deficiencies to reduce the probability of recurrence
- Reduce uncertainty and minimize risk

18.3 Overview of Corrective Action Plan Process

The steps of the Corrective Action Plan Process are shown below:





18.3.1 Step 1 – Initiate

The contract administrator prepares written notification to the contractor upon determination of the need for a CAP. This notification may be a simple letter consisting of one (1) or more pages plus any attachments and signed by the Contract Manager or other individual designated by the contract.

In preparing the notification, consideration should be given to the following:

- Who is involved?
- What is happening?
- What are the related issues/factors/extenuating circumstances, if any?
- What is the impact (actual and potential)?
- What should be happening?
- When did the problem begin?
- When was the problem identified?

Notification should include (not limited to):

- Clear, descriptive statement of each non-conformance problem / deficiency
- Any supporting facts and possible causal factors
- Reference to appropriate contract provisions
- Reference to appropriate project related documents, if any
- Reference to the Process for Corrective Action Plan (CAP) to Address Contract Requirements Deficiencies (this document)
- “Due by” date for the Contractor to respond with a CAP

18.3.2 Step 2 – Develop

Following receipt of written notification from the contract administrator, the contractor must prepare a response in accordance with contract requirements and acceptable to the contract administrator. The contractor must submit their response to the contract administrator no later than the “due by” date stated in the notification.

18.3.2.1 Minimally, the contractor response must include:

- Executive Summary
- Corrective Action Plan (CAP)

18.3.2.2 Executive Summary:



- High level contractor management's assessment of the non-conformance problems / deficiencies
- Synopsis of corrective action(s) to be taken
- Outline of the overall process for executing and completing the CAP
- Planned CAP completion date - when all corrective actions will be completed
- Commitment to the corrective action(s)

18.3.2.3 Corrective Action Plan (CAP)

The Corrective Action Plan (CAP) must contain the contractor's proposed corrective action(s) for each non-conformance problem / deficiency identified by the Department. The CAP must delineate a clear understanding and ownership of each deficiency, a detailed description and ownership of the corrective action(s), the process for tracking and reporting the status of CAP completion, planned effectiveness review activities to ensure successful resolution, and planned prevention activities to avoid a recurrence.

The template shown in **Appendix F – Corrective Action Plan (CAP) Template** must be utilized as the central document for presenting this information.

Additional information may be attached.

The following items should be included, but not limited to:

- Description of all corrective actions / tasks and completion schedules
- Dependencies between corrective actions, if any (i.e. corrective action B cannot begin until corrective action A is complete)

- Resources required (i.e. time, personnel and technology)
- Allocation of responsibility – the individual responsible for overall CAP completion and the individuals responsible for each corrective action / task
- Plans for monitoring, tracking and reporting progress towards completing the CAP



- Corrective action deliverable(s) / measure(s) / indicator(s) that will provide objective evidence that the corrective action is successfully completed
- Process for verifying completion and closure of the corrective action
- Description of the follow-up corrective action effectiveness review to be conducted to ensure successful resolution of the deficiency and prevention of recurrence
- No excuses – however, if the contractor disagrees with a stated deficiency, provide a clear explanation why and provide any supporting data

18.3.3 Step 3 – Accept / Reject

The contract administrator will review the CAP provided by the contractor and respond in writing with:

- Acceptance, or
- Provisional Acceptance, or
- Rejection of the contractor's CAP

18.3.3.1 If the CAP does not meet the criteria for acceptance, the contract administrator's response will state the reasons for the decision and the next steps to be taken.

18.3.3.2 The Department may consider, but not limit its review to the following:

- Compliance with contract provisions and project related documents
- Compliance with the Department's Process for CAP to Address Contract Requirements Deficiencies (this document)
- Are proposed corrective actions likely to eliminate deficiencies and prevent recurrence?
- Are proposed corrective actions reasonable and achievable?

- Are the action deliverable(s) / measure(s) / indicator(s) clear, meaningful and able to provide objective evidence the corrective action is successfully completed?
- Is the timeline acceptable?



- Are resources acceptable / adequate?

18.3.4 Step 4 – Execute (Manage to Completion)

The contractor will execute the CAP by completing and implementing the corrective actions to resolve the non-conformance problems / deficiencies. Implementation and completion status will be tracked by the contractor and communicated to the contract administrator to ensure timely and adequate resolution of each finding. This will be done according to the accepted plans provided by the contractor for monitoring, tracking and reporting progress towards completing the CAP. The contract administrator may modify these plans at any time, as needed.

18.3.4.1 Due diligence and follow through is very important in this step. The implementation and completion of the CAP can be tedious with potential for ineffectiveness in the corrective action outcomes. Although the findings have been identified and detailed plans to correct the findings have been developed, the often long and weary process of actively completing and implementing all of the corrective actions for each deficiency has the propensity to receive less attention as emphasis is shifted to other more immediate initiatives, crises, and requirements. It is important the CAP's execution receives continuous management attention, ongoing monitoring of progress, adaptation to keep it on track, and periodic status communication.

18.3.5 Step 5 – Close Out (Did It Work?)

This step in the CAP process includes assessment by the contract administrator and contractor to:

- Review the effectiveness of each corrective action – is the outcome acceptable?
- Review the effectiveness of the overall CAP – is the outcome acceptable?
- If appropriate, establish on-going, post implementation effectiveness monitoring

- If appropriate, establish preventive actions to avoid recurrence
- Complete a close out report



18.3.5.1 The contract administrator will evaluate the outcome of each corrective action and the overall CAP to make a determination whether these outcomes are acceptable or unacceptable. In the event of an unacceptable outcome or recurrence, the contract administrator may continue all or part of the CAP, initiate a new CAP, or institute other remedial actions at its disposal according to contract provisions.

18.3.5.2 The efforts to identify the deficiencies and implement the corrective actions are fruitless if the same or similar findings recur. Follow-up to determine the effectiveness of corrective actions in successfully resolving and preventing recurrence of identified deficiencies is critical.

18.3.6 Step 6 – Lessons Learned

Deficiencies identified and corrective action plans developed through the CAP process become natural inputs to both the risk management and the lessons learned processes.

18.3.6.1 CAPs should be periodically reviewed to determine their applicability to these processes as well as for consideration during the development of requests for proposals and requests for quotations.

DISPUTE RESOLUTION AND CONTRACT CLOSE OUT

19. Dispute Resolution

In accordance with Texas Government Code 2260, all contractual disputes are governed by this statute. Nothing in this section will supersede the statute.

Proper dispute resolution is a core skill of successful contract management. The goal of the resolution process is to resolve all problems before they escalate to the next level. It is essential to identify problems early in the performance period, use effective communication and formalize the process in writing using procedures that increase in formality as the problem persists, or for contracts with fairly simple performance requirements the Vendor Performance Form can be used. To avoid escalation and assure TSU has not exacerbated potential problems, it is imperative that appropriate personnel respond promptly to all supplier inquiries. The general steps in the dispute resolution process are described below.

| General Steps Governing Dispute Resolution | |
|--|---|
| Steps | Description of Step |
| Identify the problem | The Contract Administrator should obtain all the information regarding the potential problem from all relevant sources, including the project manager, representative customers and the supplier. |
| Research Facts | Once the problem is identified, the Contract Administrator must review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the State entity cannot expect the supplier to perform outside the agreement. |
| Evaluate | The Contract Administrator should review all the facts in conjunction with the requirements and terms and conditions of the contract. The Contract Administrator should then confer with the program manager (and management and budget, if necessary) to determine the appropriate course of action. |
| Discuss with the Supplier and Written Plan of Action | Identify the problem to the supplier and discuss resolution. Frequently, what may appear to be a problem can be resolved by providing the supplier with information. The resolution (Notice to Cure) shall be in writing. |
| Meeting Strategy | If a meeting is necessary, TSU should prepare a plan and consider how to conduct the meeting, the desired result, the minimum acceptable result, likely responses, etc. |

20. Default

A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications), but holding a vendor in default is a relatively drastic remedy and usually means that attempts to correct the problem has failed. Many contracts require a party to give notice if it considers the other party to be in default. Normally, a vendor would not be held in default until it has had an opportunity to correct a performance problem and some legal input has been given.

If it is determined that a contractor must be held in default, a "Notice of Default and Opportunity to Cure" must be sent to the vendor, describing the unacceptable vendor performance, resolution required action and a deadline within which to perform the required activity. Resolution of performance issues should be worked out with the vendor if at all possible.

21. Cure

When it has been determined that a termination for default is warranted, the Contract Administrator must promptly notify the supplier in writing and specify a deadline to correct or cure the deficiency or violation. The deadline must be a reasonable amount of time to resolve the issue.

Note that holding a vendor in default is not normally a unilateral decision by one person. Typically, various risks and benefits must be evaluated, legal advice obtained, and the proper course of action carefully planned. Usually, this is the final step before terminating a contract, once every other effort to save the contract has been made.

22. Remedies

In case of default by the contractor, TSU may terminate the contract and procure the articles or services from other sources and hold an uncured contractor responsible for any excess cost incurred thereby (such as repurchase or other cost). The contract may require a performance bond or other acceptable alternative guarantees from successful bidder without expense to TSU, prior to start of work.

23. Vendor Complaints/Discrepancies

Future sanctions against a vendor (e.g., debarment) can only occur if a written record exists that the vendor was informed of its poor performance. Complaints and/or discrepancies on vendor performance should be reported as they occur using the Vendor Performance Form. TSU is required to report to the State Comptroller's Office a vendor's performance. Vendors are subject to debarment from state contracts for (1) substandard performance, material misrepresentation, fraud breaching and repeated unfavorable performance. These vendor performance reports are necessary in order to develop



vendor history, evaluate vendor performance, and, if required, take appropriate and timely action.

Vendor Performance Form is located at <http://www.tsu.edu/about/administration/institutional-compliance/pdfs/vendor-performance-form-tsu-oic-11162015.pdf>

24. Contract Closeout

24.1 It is the responsibility of TSU to ensure the work performed for the university under a contract has been completed in a satisfactory manner and the contract is ready for closeout prior to final payment. The contract closeout checklist can serve as a tool to assist TSU during that process. The contract closeout file should contain all necessary documentation at the time of closeout. **Final payment shall never be made until all work is complete and all deliverables are received and accepted.**

24.2 The purpose of closeout activities is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract closeout is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

24.3 To initiate the closeout process, TSU shall 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, validated and accepted by TSU. Contract managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed.
- All TSU furnished equipment and materials has been returned.
- All disputes or corrective actions have been resolved.
- 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.
- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.
- Final payment has been made.

24.4 In practice, many contracts cannot be completely closed out after the date the above items are all completed, because the warranty period is effective well beyond such date and therefore the



contractor may not have "satisfactorily performed all required contractual obligations" until the end of the warranty period. Furthermore, sometimes even at that point the contract cannot be fully closed out, because it may, for example, require the contractor to "have repair parts available for years after contract award." All closeout activities should be performed as soon as practicable and the file maintained until any long term obligations are complete.

24.5 It is recommended TSU have a closeout process for contracts that allow sufficient time to finalize closeout procedures, including completion of all final obligations and issuance of payments. Good contract management and administrative procedures require that contracts be closed out and filed, not open or unresolved for an extended amount of time beyond the expiration date.

Contract Validation Checklist is located at:

<http://www.tsu.edu/about/administration/forms/procurement-services.php>



Appendix A - Contract Monitoring Checklist

It is the responsibility of TSU to ensure all contractual obligations are met and that contract monitoring is documented. This appendix serves as a tool to assist the Contract Administrator during that process. Each contract is unique and the Contract Administrator may add to this tool as required to meet its particular circumstance.

| Item # | Contract Monitoring | TSU Documentation | Yes/No |
|--|---|---|----------------------------|
| 1. | Contract: Contract number/ effective date/ contractor name/purchase order number | Contract #: _____ Contract Effective Date: _____ Contractor Name: _____ Contract Renewal Options? Purchase Order #: _____ | Yes/No |
| 2. | TSU Contract Administrator: Name/title/contact information of the person responsible for ensuring all contractual obligations are met. | Name: _____ Title: _____ Phone #: _____ E-mail: _____ | |
| 3. | Monitoring Procedures/Methodology: Written documented contract monitoring procedures/methodology. | TSU has a written contract monitoring procedures? | Yes/No |
| 4. | Delivery: Delivery date specified in the contract/date of delivery. | Contract specified delivery date: Date TSU received item(s): Full or Partial Delivery? Delivery in Accordance with Contract? | Full/Partial Yes/No |
| 5. | Acceptance: Item(s) delivered were in accordance with contract specifications | Items delivered were accepted (met contract specifications)? Latent material defects? | Yes/No Yes/No |
| 6. | Warranty: Item(s) warranted in accordance with contract. | Warranty work was required? If so, warranty was performed in accordance with the contract? | Yes/No Yes/No |
| 7. | Invoice: Invoice price mirrored purchase order price. | Invoice matched purchase order price? If no, invoiced more or less than PO? | Yes/No More/Less |
| 8. | Default of Contract: Was contractor held in default of contract and/or debarred | Was the contractor held in default? Was the contractor debarred? Was a vendor performance form recorded? | Yes/No Yes/No Yes/No |
| Enhance Monitoring Requirements | | | |
| 9 | Correction Action Plan (CAP): Performance deficiencies | Were CAPs necessary? Were they successful? | Yes/No Yes/No |
| 10 | Liquidated Damages (LD): University damaged by contractor | Was the contractor required to pay LD? Did the university collect LDs? | Yes/No Yes/No |

Contract Monitoring performed by (print and sign): _____



Appendix B - Contract Monitoring & Administration Plan

Vendor/Contractor Name: _____

Contract No: _____

This **Contract Monitoring & Administration Plan** should be used by TSU with each of its contracts. The use of this Checklist helps to ensure proper management of the contract and provides a record that professional management practices were used in the monitoring and administration of the contract.

Instructions: Please check “Yes” or “No” for each item listed below, to indicate which practices will be used in managing and monitoring the contract. **This Plan should be signed by the designated contract administrator to certify that the practices indicated were used to manage and monitor the contract.** The signed Checklist shall be included in the contract file.

| CONTRACT MONITIRING & ADMINISTRATION TOOL | | | |
|--|-------------|---|----|
| BEST PRACTICES | REFERENCES: | Will this “practice” be used to manage this contract? | |
| | | Yes | No |
| TSU written Procedures | | | |
| 1. Review the written Contract Monitoring Guide for contract monitoring. | | | |
| Contract Maintenance File | | | |
| 1. Establish and maintain a formal Contract Administration File, including all phases of the contract lifecycle. Maintain records in accordance with the records retention policy | | | |
| 2. Review pertinent Federal and State laws, rules and regulations | | | |
| Contract Development (Pre-Award or Pre-Contract) | | | |
| 1. Ensure the contract documents are developed in accordance with appropriate State laws and that terms required by law were included. (i.e.; have a <i>right to audit</i> clause in contract) | | | |
| 2. Designate a person to be responsible for the day to day monitoring of the contract to ensure deliverables and obligations are met. (i.e. Contract Administrator or Project Manager) | | | |



| | | | |
|---|--|--|--|
| 3. Have a Risk Management Contingency Plan in place to address identified risks | | | |
| 4. Identify all proposed subcontractors | | | |
| Contract Monitoring | | | |
| 1. Identify and document each contract deliverable, specification, method of evaluation (i.e. report, delivery, and inspection) expected results, timeframe, budget and performance criteria | | | |
| 2. Maintain information in an accessible database that tracks deliverables (such as: contract management system, spreadsheet, MS Outlook) | | | |
| 3. Conduct a “kick-off” or post award meeting with the contractor and establish a regular meeting schedule or follow the schedule specified in the contract | | | |
| 4. Require and utilize Progress Reports from the contractor | | | |
| 5. Conduct careful monitoring of contractor performance and maintain written records thereof | | | |
| 6. Have an internal plan for resolution of vendor performance issues. (Corrective Action Plan) | | | |
| Post Contract Administration | | | |
| 1. Conduct Post Contract Evaluations and Close-out Procedures | | | |
| 2. At the end of the contract, ensure that you have received a clearly marked FINAL invoice and progress report. Ensure the final invoice includes a signed certification stating that all expenses were true and accurate and for appropriate purposes in accordance with the contract | | | |

I hereby certify that the above indicated practices were used to manage and monitor the above referenced contract.

Signature of contract administrator _____ Date: _____



Appendix C - Contract File Checklist

It is the responsibility of the contract administrator to ensure all contractual obligations are met and contract monitoring is documented. This checklist serves as a tool to assist during that process. (Include in the contract monitoring folder/binder.)

Completed By: _____ Department: _____

Contract Number: _____ Contract Begin/End Date: _____

Name of Vendor / Contractor: _____

Contract Manager: (Dept.Head) _____

| Contract Management Activities | Yes | No | N/A |
|---|-----|----|-----|
| General | | | |
| Does the contract file contain a copy of the signed, executed current contract? | | | |
| Does the contract file contain the contract term and renewal information? Signed renewals? | | | |
| Does the contract file have a copy of all attachments listed in the contract? | | | |
| Does the contract file have all amendments, modifications? | | | |
| Does the contract file contain contact information and a call log for Contractor's key personnel? | | | |
| Does the contract file contain a problem escalation listing for the Contractor? | | | |
| Does the contract file clearly state the Contractor's "Legal Notices" address? | | | |
| Does the contract file indicate that a copy of the insurance certificate was obtained and is on file? | | | |
| Does the contract file contain any necessary licenses, certifications, etc.? | | | |
| Does the contract file contain all warranty information? | | | |
| Does the contract file contain all specifications, drawings or manuals incorporated into the contract by reference? | | | |
| Does the contract file contain a list of contractor submittal requirements? | | | |
| Does the contract file contain a list of all information furnished to the contractor? | | | |
| Does the contract file contain a list of university furnished property or services? | | | |
| Does the contract file contain all general correspondence related to the contract? | | | |
| Does the contract file contain originals of all contractor data or report submittals? | | | |
| Timeline | | | |



| Contract Management Activities - Continued | Yes | No | N/A |
|---|------------|-----------|------------|
| Has a Contract Monitoring timeline been developed for all activities required under the contract? This might include but not limited to: Dates for completing and submitting reports to the Project Manager and/or Administrative Offices. | | | |
| Project Monitoring | | | |
| Has a Project monitoring plan been developed, based on contract specifications or other applicable project or programmatic requirements? | | | |
| Does the contract file have all notices to proceed, to stop work, to correct deficiencies, or change orders? | | | |
| Does the contract file have all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules? | | | |
| Does the contract file have the records/minutes of all meetings, both internal and external? Include sign-in sheets and/or agendas? | | | |
| Does the contract file have all monitoring reports, contract manager's status to supervisor, site visits, desk reviews, and expenditure documentation reviews? | | | |
| Does the contract file have all records of complaints and vendor disputes? | | | |
| Fiscal Monitoring | | | |
| Has a fiscal monitoring plan been developed based on contract specifications or other applicable fiscal requirements? Details would include but not be limited to payment schedules, progress payments made and/or due, or other payment due dates, as required under the contract? | | | |
| Has a plan been developed to do periodic monitoring of contract pricing (PO)? | | | |
| Does the contract file have all backup documentation for contractor payment or progress payment and copies of any audits? | | | |
| Does the contract file have all contractor invoices, information relative to discount provision for prompt payment, letters pertaining to contract deductions or fee adjustments? | | | |
| Ensure the contract authorized total dollar value has not been exceeded | | | |
| Corrective Action Plan | | | |
| Has a Corrective Action Plan been developed to deal with any contract issues that might arise between the contractor and TSU? A corrective action plan should include complete contact information for TSU and the Contractor and establish guidelines agreed to by both parties regarding escalation of issues to the next level of authority, should problems be encountered. | | | |
| Liquidated Damages | | | |
| Has liquidated damages been assessed and collected? | | | |
| Reporting | | | |



| Contract Management Activities - Continued | Yes | No | N/A |
|--|------------|-----------|------------|
| Have periodic reviews been setup within this contract to discuss spend, customer service, pricing issues, billing and invoicing, etc. | | | |
| Does the contract file have all routine reports required by the contract such as sales reports, pricing schedules, approval requests, inspection reports and performance reports | | | |
| Contract Close-out | | | |
| Determine that the contractor has satisfactorily performed all required contractual obligations | | | |
| Conduct a post contract evaluation and the contract close-out procedures. Ensure process is documented | | | |
| List of Stakeholders | | | |
| Does the contract file contain the names and contact information for all major stakeholders in this project? | | | |
| A "stakeholder" is an individual or department that has had input into the development of the contract, and who would need to be notified at once should there be problems, proposed amendments (including cost or price changes), changes in the scope of work or schedule of deliverables, changes to the agreed upon timeline, decisions to exercise cancellation clause, decision to exercise options to renew and the like. | | | |
| Stakeholders would include: <ul style="list-style-type: none"> - Departmental Head - Purchasing Director/Dean - Purchasing or Contract Specialist - Project or Program Manager - Budget Account Manager - Contract Manager - Contract Administrator | | | |
| | | | |
| | | | |

Contract Administrator:

Print Name

_____ **Date** _____

Signature



Appendix D – Contract Kickoff Meeting Checklist

<Insert Date and Time>

<Insert Location><Insert Conference Number and Access Code, if applicable>

| Topic | |
|--|--|
| Goal and Objective for the meeting | |
| Review of Agenda | |
| Introductions | |
| TSU Team and their roles (point of contact for Contractor) | |
| Communication Protocol | |
| Implementation Timeline <ul style="list-style-type: none"> a. Decisions or obstacles impacting timeline b. Factors to be considered c. Due dates for gathering & definition of requirements (if applicable) d. Impact on other agencies/divisions/units (if applicable) e. Specific Contractor implementation tasks f. Specific TSU implementation tasks | |
| Data Flow <ul style="list-style-type: none"> a. System of record for data b. Determine data points and flow for end receipt | |
| Functionality and Informatics Considerations: (if applicable) <ul style="list-style-type: none"> a. Telephonic Enrollment b. Web-Portals c. Access to the TSU’s offices and equipment | |
| Structure and frequency of future meetings <ul style="list-style-type: none"> a. Format b. Duration c. Onsite at TSU or remote | |



| Financial and Performance Monitoring Considerations | | |
|---|---|--|
| | If performance and payment bonds are required, be sure copies have been obtained and validity verified by confirming with surety underwriter prior to start of work. | |
| a. | Requirement for periodic evaluation reports of contractor performance and/or progress reports be furnished to the purchasing office | |
| b. | That maintenance manuals, parts lists and as-built drawing have been obtained prior to authorization of final payment or as required by contract terms | |
| c. | A clear understanding of all contractor supplied warranties or bonding commitments | |
| d. | The need to advise the purchasing office if changes to the contract, follow-up maintenance or other services, etc., may be required | |
| e. | Acceptance and approval of the receipt of goods and services and documenting the contractor's invoices for approval of payment | |
| | Be sure the user has encumbered funds to pay for services which overlap fiscal years. | |
| | Provide a copy of the contract and any subsequent changes to accounts payable for invoicing/payment action verification. | |
| | Establish and plot critical contract performance milestones required of contractor (e.g., checklist, progress reports or other written deliverables). | |
| | Compile a tracking report on payments made against the contract. | |
| | If the contract is renewed be sure that price and all other requirements are based upon conditions of the basic contract. | |
| | If contractor's performance or delivery is unsatisfactory, issue a Vendor Performance Form, Cure or Termination letter (as appropriate). Sample letters are included. Should action not yield satisfactory results or assistance is needed, contact the Procurement Department. | |



TEXAS SOUTHERN UNIVERSITY

Appendix E - VENDOR PERFORMANCE FORM

**Reporting of vendor performance is mandated by
The Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108.**

VENDOR NAME: _____

Vendor ID: _____

Contact Name: _____

Address / PO BOX: _____

City / State: _____ **Phone #:** _____ **Email Address:** _____

CONTRACT DESIGNATION:
 Commodities Services

CONTRACT TYPE:
 CPA Open Market IT/Telecommunications Delegated CPA Term Contract TXMAS Exempt
 Other

GENERAL INFORMATION:
Purchase Order# _____ **PO Date** _____ **PO Amount** _____ **Requisition #** _____

Contract# _____

CONTRACT TYPE/ACTION:
 New Agreement Renewal Modification/Amendment Extension

Best Value

SPD typically utilizes purchase price and whether goods or services met specifications in its determination of whether the vendor met the best value standard.

Did the vendor meet the Best Value Standard? Yes _____ | No _____

Please indicate at least one of the following Best Value Criteria

Please indicate at least one of the following Best Value Criteria:

- Purchase Price
- Goods/Services met specifications
- Installation Costs
- Life Cycle Costs
- The quality and reliability of the goods and services
- The effect of a purchase on agency productivity
- The cost of any employee training associated with a purchase



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- The vendor's anticipated economic impact to the state or subdivision
- The vendor's financial resources and ability to perform
- The vendor's experience or demonstrated capability and responsibility
- The vendor's ability to provide reliable maintenance agreements and support
- Other factors relevant to determining the best value for the state in the context of a particular purchase:

Other Comment Box

Positive Performance

Please check all that apply:

- (301) Shipment made early upon agency/co-op member request
- (303) Product upgrade substitution suggested and accepted at no additional cost to the agency
- (305) Exceptional customer service response
- (309) Provided technical/training/set-up assistance when not required
- (310) Order or service completed satisfactorily
- (311) Voluntary Price reduction for large order
- (399) Vendor commended

Negative Performance

Please check all that apply:

Delivery:

- (005) Late Delivery
- (006) 1st Written notice issued for late delivery
- (007) 2nd Written notice issued for late delivery
- (008) Failure to deliver
- (010) Delivery made at wrong destination



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Shipment:

- (014) Failure to identify shipments per contract terms
- (016) Short/over, weight or count
- (018) Vendor shipped incorrect merchandise
- (022) Failure to pick up incorrect shipment
- (023) Improper product packaging or palletizing

Product:

- (038) Poor product quality and/or performance
- (083) Failure to meet specifications (Give details below)
- (085) Poor product quality

Customer Service:

- (020) Failure to replace damaged goods
- (021) Slow replacement of damaged goods
- (040) Failure to promptly notify TPASS/Agency/CO-OP Member concerning manufacturer discontinuation of an item
- (042) Repair parts not available
- (087) Failure to respond to letter, phone call, or email
- (090) Poor customer service (Give details below)
- (091) Unauthorized substitution

Customer Service Continued:

- (095) Failure to supply performance bond within required time
- (102) Service not performed within specifications
- (110) Incorrect invoices
- (114) Failure to comply with requirements of HUB Subcontracting Plan (HSP) (Give details below)
- (120) Failure to provide proof of insurance or maintain insurance
- (121) Failure to provide report(s)



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Customer Service Continued:

- (126) Failure to respond to emergencies as required
- (127) Failure to close out project as specified
- (128) Certification not received on time
- (130) Failure to pay administrative fees

Work Product:

- (124) Failure of workforce to meet specifications
- (122) Misrepresentation of qualifications (Give details below)
- (123) Falsification of/fraudulent submittals (Give details below)
- (125) Incorrect allocation of work (Give details below)
- (050) Inspection - Random (CPA use only)
- (051) Inspection - Requested (CPA use only)

Work Product Continued:

- (052) Inspection - Receiving Agency
- (100) Unsatisfactory installation
- (111) Failed inspection (CPA use only)
- (129) Failure to comply with code of conduct as specified
- (024) Failure to follow palletizing instructions
- (113) Failure to comply with terms/conditions of contract (Give details below)

Miscellaneous Issues:

- Other

Performance Details:

Satisfactory Resolution

To access the resolutions, please select one or more of the Negative performance codes page. Otherwise, please proceed with your submission.



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Please check all that apply:

Customer Service:

- (217) Performance bond received
- (220) Invoice corrected
- (236) Entire contract canceled (No fault of vendor)
- (249) Order completed
- (255) Substitution approved by awarding agency
- (256) Insurance requirements received
- (258) Certification received
- (259) Resolved and documented (No fault of vendor - Give reason below)
- (261) Paid administrative fees

Work Product:

- (208) Service met specifications
- (209) Performance corrected
- (212) Equipment performance corrected

Product:

- (205) Item met specification via inspection
- (210) Material or item replaced
- (230) Item canceled from contract (No fault of vendor)

Shipment:

- (207) Delivery made after vendor was notified
- (251) Correct shipment received

Miscellaneous:



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- (202) Complaint withdrawn (Give reason below)
- (234) Item/entire order canceled
- (260) Vendor failed to receive purchase order on time (Agency or postal fault)
- (280) "Green" No current issues - submit and print report (CPA use only)
- (299) Other (Give reason below)

Unsatisfactory Resolution

Please check all that apply:

Cancellation:

- (228) Item canceled from contract (Vendor failure-vendor initiated)
- (229) Item canceled from contract (Vendor failure-state initiated)
- (235) Entire contract canceled (Vendor fault)
- (266) Item/entire order canceled (Vendor fault)

Damages:

- (211) Damages Assessed
- (213) Failure to pay assessed damages
- (237) Damages paid

Shipment:

- (201) Late Delivery
- (225) Shipment rejected (Give reason below)
- (267) Delivery not corrected by vendor

Unresolved:

- (253) Performance not corrected, CPA action taken (CPA use only - give reason below)
- (262) Order not complete (Give reason below)



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Unresponsive:

- (269) Failure to provide required documentation (vendor fault)
- (270) Vendor Failed to Respond to Complaint
- (271) Administrative fees not paid – vendor on warrant hold

Miscellaneous:

- (263) Manufacturer fault (Give reason below)
- (264) Resolved and documented (Vendor fault -give reason below)
- (265) Substitution not approved by awarding agency
- (281) "Yellow" - Solution within division - give impact and detail explanation below (CPA use only)
- (282) "Red" - Escalated outside of division - give impact and detail explanation below (CPA use only)
- (298) Other (Give reason below)

* Resolution Date:

Resolution Comments/Details:

Factors for Potential Debarment

Please indicate if any of the following referenced in Government Code 2155.077 have occurred:

- Material Misrepresentation Material Breach of Contract Fraud

Vendor Grade

Please rate the vendor's performance for this purchase order on the scale below. A= Excellent performance, B= Good performance, C= Satisfactory performance, D= Unsatisfactory performance, F= Extremely unsatisfactory performance".

- A** **B** **C** **D** **F**



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Appendix F: Corrective Action Plan (CAP) Template

| # | Deficiency Description | Actions to be taken (Prospective & Preventative) | Indicator the Deficiency is Resolved | Status Tracking and Reporting | Resources | Planned Complete Date | Actual Complete Date | Completion Confirmed Review Date |
|---|------------------------|--|--------------------------------------|-------------------------------|-----------|-----------------------|----------------------|----------------------------------|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |



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Appendix G - Notice of Default and Request to Cure Template

(Use TSU letterhead)

Note: Send only after the Office of General Counsel review and proper authorization

Date

Contractor Name and Address

Re: Contract # _____ -- Notice of Default and Request to Cure

Dear _____:

This letter will provide formal notice that [Contractor] is in default of the above-referenced contract, dated _____, for failure to ... [describe nature of performance failure; e.g., make timely delivery, non-conformity with specifications (identify spec.), meet performance standard, etc.], as required in ... [identify paragraph or page of the contract] of the relevant contract.

If you do not fully cure this default within ___ days after the date of this letter [or specify a date], Texas Southern University may exercise its right to terminate the contract for cause, in accordance with paragraph ___ of the Terms and Conditions [or other applicable term].

Sincerely,

[Name and Title of person signing letter]



TEXAS SOUTHERN UNIVERSITY

Appendix H - Notice of Termination and Remedies Template

(Use TSU letterhead)

Note: Send only after the Office of General Counsel review and proper authorization

Date

Contractor Name and Address

Re: Contract # _____ -- Notice of Termination

Dear _____:

This letter will provide formal notice of termination of the above-referenced contract between [Contractor] and Texas Southern University dated _____, effective [immediately, or on a specific date]. You were notified of default under this contract by letter. Therefore this contract is terminated for cause, pursuant to its paragraph ____.

You are hereby advised to cease all further performance, immediately. Texas Southern University will obtain substitute [goods/services], and, without limitation of any other remedy available under applicable law, [Contractor] is responsible for any additional cost of such [goods/services], as well as any additional costs or damages arising from the default.

Once the additional cost of obtaining substitute [goods/services] is determined, you should be of the amount due. Please note that failure to pay an amount due to the State may result in debarment until such amount is fully paid, as well as in additional collection action.

Sincerely,

[Name and Title of person signing letter]



Appendix I – Contract Validation Checklist

It is responsibility of TSU to verify that the work under a contract has been completed and the contract is ready for closeout prior to final payment. This checklist can serve as a tool to assist the contract administrator during that process. Each contract is unique and the contract administrator should customize the checklist as required to meet its particular circumstance. The contract file should contain all necessary documentation at the time of closeout. **Absent specific provision in a contract to do so, final payment should never be made until all work is completed in a satisfactory manner and all deliverables are received and accepted.**

| Contractor Name | Contract Number | Project Completion Date |
|--|-----------------|-------------------------|
| Task | | Date Completed |
| The Contractor has notified TSU that all work required by the contract is complete | | |
| TSU has reviewed and validated that all contract deliverables including all required reports are in accordance with the contract terms and conditions | | |
| The Contractor has complied with all contractual terms and conditions | | |
| The contract file contains all contract addenda or contract change documentation | | |
| The contract file contains a record of all payments made to the contractor | | |
| All property, inventory and ownership issues are resolved including disposition of any equipment, licenses purchased, or warranty information under the contract | | |
| All monitoring issues have been resolved | | |
| All TSU specific required approvals have been received | | |
| Final invoice has been received and paid | | |

Other Contract/TSU Specific Tasks

Signature _____

Title _____