

06-11. Contract Monitoring and Management

Internal Policies and Procedures of the Utah State Board of Education
Policy # 06-11
Subject: Contract Monitoring and Management
Effective Date: 1/19/2018 Revision Dates:
Purpose: To provide uniform best practices and procedures for USBE staff to effectively manage contracts, and to ensure that USBE staff are monitoring contracts so that the goods and services are provided in accordance with the terms of the contract, protecting the financial interests of the Board and the state.
Policy: USBE staff should begin planning for contract monitoring early (before issuance of solicitation) and prudently manage the contract throughout the entire duration of the contract to ensure that the goods and services are provided in accordance with the terms of the contract. Planning and proactive management are essential.
References: Utah Code Annotated, Title 63G Chapter 6a, Utah Procurement Code; Utah Administrative Code Title R33; Utah Administrative Code Title R277-122

Procedures:

06-11.1. General Provisions

- Purchasing will establish an official file for each contract and maintain all documentation in the file for each fully executed contract, IAA, MOU or other agreement.
- The contract will be assigned a contract number. Purchasing will upload a copy to an electronic repository, and will upload a copy to FINET or the other financial system being used. The official file, including paper and electronic copies, will include:
 - A copy of the current contract and all amendments.
 - A copy of the contractor's documents, including
 - Vendor performance evaluation and backup documentation
 - Required insurance documents
 - Warranty information
 - Licenses, permits, and certifications
 - Any specifications, drawings, or manuals incorporated into the contract by reference.
 - A reference list or a list of prior contracts with the contractor, if they would offer valuable historical data.
 - The solicitation document, contractor's response, evaluation determination, and notice of award document.

- A list of contractor submittal requirements
- A list of government-furnished property or services.
- A list of all information and equipment furnished to the contractor.
- A copy of the post-award conference summary, if conducted.
- A schedule of compliance review and internal correspondence, if applicable.
- A copy of all general correspondence related to the contract.
- The originals of all contractor data or report submittals.
- A copy of all routine reports required by the contract such as sales reports, pricing schedules, approval requests, and inspection reports.
- A copy of all notices to proceed, to stop work, to correct deficiencies, notice of termination, or to change orders.
- A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules.
- The records/minutes of all meetings, both internal and external, including sign-in sheets and agendas.
- A copy of all monitoring reports: contract manager's status to supervisor, site visits, desk reviews, and expenditure documentation reviews.
- A copy of all contractor invoices, information relative to discount provisions for prompt payments, letters pertaining to contract deductions or fee adjustments.
- A copy of all backup documentation for contractor payment or progress payments
- A copy of any audits
- The section is responsible for assigning a contract administrator for each contract. This contract administrator is the technical contact for the file. This individual will work with the vendor on performance, review and approve invoices to ensure compliance with the contract and that the invoice accurately reflects work performed and/ or goods delivered.
- The contract administrator MAY NOT amend the contract, provide contractual direction, or alter performance obligations without an official amendment processed through Purchasing.
- All amendments to contracts, IAAs, MOUs, and other agreements must be reviewed, approved, and processed through Purchasing. Contract amendments adding time or funds must comply with current policy and receive approval, prior to agreement or execution.
- If an individual makes a public records request under Utah's Governmental records Access and Management Act (GRAMA), it may be necessary to redact certain information in the contract file. USBE staff should consult with the USBE GRAMA officer and Purchasing if a GRAMA request is received related to a contract file.

- In accordance with the Utah Procurement Code, USBE will maintain all documentation for at least 6 years after the contract expiration date.

06-11.2. Hold a kickoff (post-award, work plan) meeting.

- A USBE contract administrator should hold an initial kickoff meeting with the contractor.
- This meeting is the time for both parties to understand the contract responsibilities and expectations, including the terms and conditions of the contract.
 - This meeting is not a venue to change the terms of the contract.
- This orientation meeting does not have to occur face-to-face meeting. Depending on the complexities of the contract or other circumstances (including the type of contract, level of risk, monetary value, contract length, history of the contractor, and urgency of delivery schedule), this meeting may be conducted over the phone.
- It is best to establish an agenda for the meeting and review major points of the contract including, scope, contract amount, major performance milestones and measurements, contract administration and individuals' roles for both parties, rights of both parties, potential problems or issues, project deliverables and reports, and payment.
- A written summary of the meeting, including those individuals present, any points of clarification, and any assigned responsibilities for additional action (including due dates), should be included in the contract file.

06-11.3. Duties of the contract administrator

- The principal function of contract monitoring and administration is to track the contractor's performance and ensure that the terms and conditions of the contract are being met.
 - The primary focus of monitoring will be the outputs or outcomes resulting from the contract.
- Not every contract will require the same amount of monitoring, but in general, contractors need to understand expectations and USBE contract administrators need to track the performance of the contractor to ensure that all duties are being performed in accordance with the terms of the contract.
- Primary responsibilities of the contract administrator include:
 - Implementing the contract
 - Ensuring USBE and contractor compliance with the contract terms and conditions
 - Working with Purchasing to execute change orders
 - Working with Purchasing to process contract amendments
 - Resolving, to the extent practicable, contract disputes, without amending the contract
 - Working with the vendor and Purchasing to cure contract errors and deficiencies
 - Working with Purchasing to terminate a contract
 - Measuring or evaluating completed work and contractor performance

- Computing payments under the contract
- Closing out the contract
- A contract administrator MAY NOT:
 - Inappropriately or unknowingly ask the contractor to perform duties outside the scope of work in the contract.
 - Award, agree to amend, modify, increase the scope, dollar value of, or sign any document directing change, without adequate amendments agreed to and executed by both parties, completed through Purchasing.
 - Issue instructions to a contractor to start or stop work, except in an emergency situation, without adequate written documents, approved by Purchasing.
 - Include personal opinions in any correspondence with the contractor.
 - Make commitments or oral or written promises to a contractor.
 - Authorize delivery or disposition of governmental-furnished property.
 - Obligate the USBE beyond the terms and conditions of the contract.
 - Grant deviations from or waiving any of the terms and conditions of the contract.
 - Change the period of performance.
 - Authorize subcontracting or the use of consultants.
 - Authorize the use of overtime.
- To plan for monitoring, a USBE contract administrator should:
 - Review and understand the terms and conditions, scope of work, specifications, and any other attachment of the contract
 - Determine the sequence of activities, required outcomes, and acceptable performance levels.
 - Develop a plan, including start and end dates, for each performance component, including reporting and monitoring milestones.
 - Establish clear lines of communication, identifying specific individuals from the USBE who might interact directly with the contractor.
 - Determine whether the contractor will need access to USBE facilities, equipment, data, staff, materials, or other information.
 - Communicate with the contractor on a regular basis to review progress, discuss problems, and any needed changes.
 - Address problems and resolutions.
 - Maintain documentation of all administration activities and resolution of identified defaults.
 - Verify receipt of specified services, goods, and reports.
 - Verify that all performance measures and reports are completed in a satisfactory manner in accordance with the contract.
- A contract administrator provides various types of review, which may include:

- A site visit, which may be a regular visit to the contractor's place of business or to focus on a particular compliance problem.
- A desk review, which includes reviewing reports submitted by the contractor and comparing to the expectations set forth in the contract.
- Expenditure document review, where the USBE contract administrator reviews contractor invoices for compliance with the contract, and whether the information detailed with the invoice adequately supports the request for payment.
- Managing or providing oversight for a third-party reviewer, in the instance where a subcontractor is providing the contract monitoring for the USBE.

06-11.4. Reporting

- It is important for a USBE contract administrator to receive reports from the contractor, and also to provide regular reporting on the contract to the Superintendency.
 - A USBE contract administrator should report concerns or problems with a contract to the Superintendency as soon as they arise.
- A USBE contract administrator should request regular status reports from the contractor, describing the completed work, the pending work, and any unresolved issues that USBE needs to resolve.
- A USBE contract administrator should review the status report from the contractor against the contract to ensure that the work complies with the terms and conditions of the contract. Additionally, the contract administrator should evaluate the timeframe of the contract, and ensure that the work provided by the contractor is within a reasonable timeframe to keep the contract on schedule.

06-11.5. Payment

- A USBE contract administrator needs to ensure that the costs billed by the contractor are in accordance with the contract payment terms.
- Unless specified otherwise in the contract, the USBE will pay a contractor 30 days after receipt of a correct and official invoice from the contractor, or at the acceptance of goods, whichever is later.
- Review an invoice to ensure that the contractor is billing only for goods or services received and accepted as appropriate by USBE, and that the invoice is detailed enough to check it against the contract and ensure its compliance with the contract.
- Check with the section accountant to ensure that funds are available before payments to the contractor are made, or a before promising funds on a certain date.
- Total payments to the contractor may not exceed the contract limit.
- Any deviation from payment terms in the contract requires an official contract amendment.

06-11.6. Dispute Resolution

- The goal of the dispute resolution process is to resolve all problems before they escalate.
- By effectively monitoring a contract, USBE staff can identify problems early for resolution.
- To avoid escalation and not exacerbate the problem, USBE staff need to respond promptly to all contractor inquiries.
- It is imperative to document issues and communications with the contractor and keep written records in the contract file.
- General steps governing dispute resolution
 - Identify the problem – gather all information regarding the potential problem from all relevant sources, including a project manager, representative customers, and the contractor.
 - Research facts and evaluate discrepancy – review facts and also the contract to confirm that the issue is relevant and covered by the contract. Contractors are not expected to perform duties outside the contract.
 - Evaluate with Superintendency – if the contract administrator determines a problem with the contractor or the contract, the appropriate superintendent, director, and Director of Purchasing should be made aware of the situation to determine the appropriate course of action.
 - Discuss with the contractor and create written plan of action – contact the contractor and identify the problem. Discuss a resolution to the problem and write up the resolution to the problem to retain in the contract file.
 - Meeting strategy – if the problem cannot be solved over the phone, establish a meeting between appropriate USBE representatives and the contractor. USBE personnel involved in the meeting should determine how to conduct the meeting, the desired result, the minimum acceptable result, and likely responses from the contractor.

06-11.7. Contractor Complaints/Discrepancies

- Future sanctions against a contract can only occur if a written record exists that shows that the contractor was informed of poor performance.
- Document all issues with the contractor. This shall include all emails, letters, notes from all phone calls, and other information relating to the performance of the contract.
- All official correspondences regarding the contract and performance SHALL come from Purchasing.

06-11.8. Default

- A contractor is considered in default if the contractor fails to perform in accordance with the terms and conditions of the contract, such as late delivery or nonconformance to specifications.

- Default is a relatively drastic remedy and should only be used when all prior remedies have been exhausted.
- A USBE contract administrator shall request a meeting with the appropriate member of the Superintendency, Purchasing, and legal counsel (through the USBE’s associate attorney generals) before notifying a contractor of default.
- If USBE determines that all attempts to rectify the problem have been addressed, the contractor shall be sent a “Notice of Default and Opportunity to Cure.” This notice shall be drafted by Purchasing, reviewed by legal counsel.
 - The notice shall describe the contractor’s performance that was unacceptable, the resolution required to correct the action, and a reasonable deadline to perform the required action.
- If the contractor is found to be in default, the USBE may terminate the contract and procure the goods or services from other sources, in accordance with the terms and conditions of the contract. Additionally, the USBE may hold an uncured contractor responsible for any excess cost incurred, such as repurchase.

06-11.9. Closeout

- Purpose of closeout is to ensure that both parties have fulfilled their obligations of the contract, that contracted work has been completed in a satisfactory manner (take time to reflect on the performance of contractor and any lessons learned), and the contract is ready for closeout prior to final payment.
- USBE may not make a final payment on a contract until all work is complete and all deliverable are received and accepted.
 - Compare performance against performance measures, goals, and objectives
 - Ensure all USBE-provided equipment and materials are returned
 - Ensure all monitoring issues, disputes, or corrective actions have been resolved
 - Any deficiencies found as part of this closeout process are documents and communicated to all appropriate parties
 - Ensure all property inventory and ownership issues are resolved, including disposition of any equipment or licenses purchased under the contract, intellectual property returned, or destroyed
 - Contractor is aware of and in compliance with records retention requirements and a plan exists for contract file maintenance
 - Parties should review any warranty period that extends past the termination of the contract
 - Make final payment
- Complete all closeout activities as soon as practicable and maintain files until all long-term obligations are complete.
- Records shall be kept for a minimum of 6 years from the date of the last payment.