9. CONTRACT MANAGEMENT

9.00 • INTRODUCTION
(Rev 11/12)

The contract manager is the authorized representative of the State of California responsible for administering a contract and monitoring the contractor's performance. The contract manager serves as a liaison with the contractor and may perform administrative tasks ranging from the request of contract services through the performance and final payment for completed services.

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9.04 • RESPONSIBILITIES OF A CONTRACT MANAGER
(Rev 11/12)

A. Typical responsibilities of the contract manager are as follows:

1. Develop and write a clear, concise, detailed description of the work to be performed.
2. Review the draft contract for contract provisions, scope of work, technical requirements, completion dates, benchmarks, timelines, estimated quantities, dollar amounts, and final product.
3. Ensure compliance with all applicable federal or other regulations.
4. Ensure that funding is available and the contract is encumbered in conformance with the agency's policy.
5. Notify the contractor to begin work.
6. Maintain contract documentation.
7. Monitor the contract to ensure compliance with all contract provisions:

a. Monitor progress of work to ensure that services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract; e.g., review progress reports and interim products.

b. Ensure that all work is completed and accepted by the agency before the contract expires.

8. Assess and request amendments, renewals or new contracts as required allowing sufficient time to process and execute such changes before the contract expires or funds are depleted in order to prevent a lapse in service. Often, two (2) months are required for amendments and renewals, and four (4) to six (6) months for new contracts.

9. Review invoices to verify work performed and costs claimed in accordance with the contract.

10. Timely dispute or approve invoices for payment to avoid penalties under GC § 927, et seq.

11. Monitor contract expenditures to:

a. Ensure there are sufficient funds to pay for all services rendered as required by contract.

b. Identify low spending levels and consider partial dis-encumbrance and reassignment of funds.

12. Notify appropriate personnel of equipment purchase, if applicable, and ensure property is tagged and inventoried before approving cost reimbursement.

13. Monitor use of DVBE subcontractors and suppliers to ensure attainment of applicable contract participation goal. Contract managers should ensure that language for verification of DVBE participation is included in the contract (See SCM 1, chapter 8).

14. Contact the Contracts Office for assistance with contract problems.

15. Verify that the contractor has fulfilled all requirements of the contract before approving the final invoice.

16. Identify and approve the final invoice, as appropriate, and forward it to accounts payable for payment.

17. Complete the Contractor Evaluation form – STD 4, for consultant services contracts of $5,000 or more. Negative evaluations must be sent to DGS/OLS (See SCM 1, section 3.02).

18. Approve the final products or service.

B. Each agency must prepare the following reports required by legislation:

1. Fair Employment and Housing (Contract Award Report – STD 16, due within ten (10) working days of the award date) where applicable.

2. Consolidated Annual Reporting information – To assist DGS in its annual statewide contracting activity reporting, agencies must submit information, including but not necessarily limited to SB and DVBE usage, consulting services, SB/DVBE option and DVBE incentive, due to the DGS Contract Reports Coordinator no later than close of business August 1 annually. (PCC § 10111.) Additional information regarding required reporting can be found on the DGS/OSDS website and SCM volume 1, section 7.15, and SCM volume 2, chapter 12.

9.05 • CONTRACT MANAGER "DON'TS"
(Rev 11/12)

A. The contract manager is ***not*** authorized to take the following actions:

1. Instruct the contractor to start work before the contract is executed and approved.
2. Change any term or condition of the contract.
3. Direct the contractor to do work that is not specifically described in the contract.
4. Sign the contract as the agency's authorized signator unless authorized in writing.
5. Sign any contractor's contract form.

B. The contract manager shall not authorize payment to the contractor for any work not performed satisfactorily.

C. In addition, the contract manager is ***not*** authorized to do the following without an executed and approved contract amendment in place:

1. Extend the time period of the contract.
2. Allow the contractor to incur costs over the original limit set in the contract.

9.07 • ETHICS
(Rev 11/12)

A. A state officer or employee shall not engage in any activity or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. Such activities or enterprises include:

1. Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.
2. Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee. (GC § 19990.)

B. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interest of the financial interests of persons who have supported them. (GC § 81001; see GC § 81000 et seq. (Political Reform Act of 1974).)

C. Courts have long held that a public officer is impliedly bound to exercise his or her powers with disinterested skill, zeal, and diligence and primarily for the benefit of the public. (See *Noble v. City of Palo Alto* (1928) 89 Cal.App.47.) A personal interest, whether financial or non-financial, that interferes with an official's ability to act in such a manner could potentially violated this common law doctrine.

D. Even the appearance of questionable or unethical practices is detrimental to both employees and their department.

E. Each department creates rules proscribing activities and enterprises, which may be set forth in policy and an incompatible activity statement. Each department also adopts its own conflict of interest code, in which it designates officers and employees that are subject to the department's conflicts of interest rules. Departments may impose additional requirements that are stricter than those required by law.

F. The Fair Political Practices Commission (FPPC) promulgates regulations to carry out the intent of the Political Reform Act of 1974. See, e.g., FPPC regulations, 2 CCR §§ 18703.4, 18704.1, 18705.4, 18728, 18940 through 18946.5, and 18950.1 regarding gifts, and relevant FPPC regulations as hereinafter promulgated and/or amended.

G. Public officials, state officers and employees are urged to review applicable statutes, FPPC regulations, and their department's policy, conflict of interest code and incompatible activity statement for guidance regarding ethical issues. Officers and employees should also be aware of Form 700 filing requirements. Questions regarding your obligations and resolution of any questionable relationships or practices should be referred to your supervisor.

9.09 • RECORD KEEPING
(Rev 11/12)

Each agency is responsible for maintaining all invoices, records, and relevant documentation consistent with the agency's record retention schedule for at least three (3) years after the final payment under the contract (GC § 8546.7). (See also SCM 1, section 7.50.)

Agencies should also be mindful of their obligations under the California Public Records Act (Govt. Code § 6250 et seq.).

The following format is recommended for the maintenance of contract records:

1. Label a file folder for each contract administered. In each file folder include:
   a. A log sheet for a diary of activities related to the contract. Each time you speak with anyone about the contract, make a note of the date of the discussion, and the subject matter discussed;
   b. A file guide labeled "Invoices." Retain a copy of all invoices in this file guide;
   c. A copy of the executed contract and other pertinent documentation, such as a copy of the original contract request and any correspondence related to the contract or contractor.
2. Prepare a computer file of all contracts administered. This practice allows easy access to management information, such as expenditures, contract expirations, and contract renewals.
3. Prepare a spreadsheet of expenditures. This practice is especially necessary if electronic tracking is not used. The spreadsheet can be a simple document showing the contract amount encumbered and the deduction for each invoice as it is approved for payment.
4. Document the notification to the contractor of the start date. Work cannot begin before contract execution and the effective date of the contract. Although initial notification to start work may be verbal, it should also be documented in writing and a copy of the notification retained in the contract file.
5. Keep copies of the correspondence with the contractor. All communications about the contract and/or the contractor should be in writing or followed up in

writing and a copy placed in the contract file. This practice protects the agency and the contract manager in the event of a contract dispute or an audit.

6. Monitor and document the performance of contract services. Contract managers must monitor the contractor's performance and document it accordingly.

7. Document the nonperformance of contract services. If problems are encountered during the term of the contract, they should be fully documented. Letters to contractors should outline any problems related to substandard or non-performance. Cite contract specifications verbatim in letters so that there is no uncertainty about the services covered in the contract. All letters about nonperformance should be sent by certified mail with copies to all relevant parties. A copy of the letter should be sent to the appropriate payment unit to eliminate the possibility of erroneous invoice payment. (See SCM 1, section 9.11.)

8. Oversee the completion of the contract. To finalize or complete the contract process, contact the contractor to determine whether all invoices have been received. Disencumber any remaining funds by notifying the appropriate payment unit by memo of the amount to be disencumbered. A copy should be retained in the contract file folder. If a computer file was used, close that file. Disencumbrance should be completed in a timely manner to release unspent funds for other purposes within the current fiscal year.

9. Evaluate the contractor. Any consultant services contract of $5,000 or more requires completion of a Contract/Contractor Evaluation – STD 4, within 60 days after completion of the contract (PCC § 10369). When a negative finding is made, the Contractor Evaluation – STD 4, shall be forwarded to DGS/OLS within five (5) days of completion of the evaluation. Contract/Contractor Evaluation forms are not public documents and should not be kept in the contract file.

9.11 • PERFORMANCE OF THE CONTRACTOR

Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's contract file.

1. When work under a contract is unsatisfactory, a contract manager should:

   a. Notify the contractor in writing by certified mail;

   b. Explain why the work is not satisfactory and what corrective action is expected; and

   c. Give a specified period of time in which to satisfactorily perform the work.

2. In addition, the letter should inform the contractor that if the problems are not corrected, or if performance does not satisfactorily improve, the agency will terminate the contract; have the work finished by another contractor; and hold the original contractor liable for any additional costs, including the costs of administration and rebidding of the work.

3. If the contract manager and the contract officer are uncertain of sufficient cause to terminate the contract and assess damages, they may request a legal opinion from the agency's legal counsel.

4. After reviewing the case, legal counsel may make recommendations for an appropriate settlement of the subject contract and outline the necessary steps to be taken.

9.12 • TERMINATION OF THE CONTRACT
(Rev 11/12)

A. Contractors should be notified by certified mail, or personal service, if an agency intends to exercise a termination for cause in the contract. The letter should also clearly set forth any task(s) required by the contractor such as return of State equipment, submittal of final invoice for work completed, etc.

B. The contractor must be reimbursed for all reasonable expenses authorized and incurred up to the date of termination, including any costs associated with termination, pursuant to the terms of the contract. However, the State is only obligated to pay for goods or services that meet the performance standards under the contract.

9.14 • CLOSING OF SERVICE CONTRACTS

It is the contract manager's responsibility to close the contract file. This action may consist of, but is not limited to, disencumbrance of funds, evaluation of the contractor, and authorization of final payment of invoices. If applicable, it may involve requesting renewal of the contract.

9.16 • RETENTION OF CONTRACT RECORDS
(Rev 11/12)

All contracts involving expenditures of public funds in excess of $10,000 must contain a provision that the contract is subject to the examination and audit of the awarding department or its delegate or the State Auditor for a period of three (3) years after final payment under the agreement. The contractor must agree that the awarding department shall have access to premises, on reasonable notice, during normal business hours for interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance (GC § 8546.7, PCC § 10115 et seq.; 2 CCR §§ 1896.60 et seq. and 1896.75).

In view of the need for contract records for present and possible future antitrust litigation, the Attorney General's office has requested that contract records be retained for a period of seven (7) years from either the closeout date or the payment date on the last invoice, whichever is earlier.