

WA-State Contract Management Manual

January 2019



WA-State Contract Management Manual

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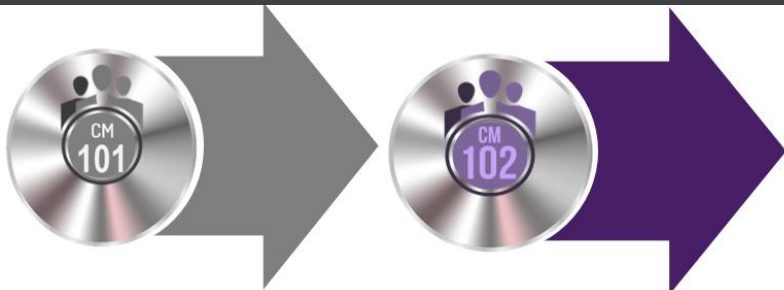
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Contract Management Training Program At-A-Glance Tool

REQUIRED:



Contract Management 101 (CM101) and Contract Management 102 (CM102) are required for all those who administer, monitor, or manage vendor relationships of a contract. Then those mentioned above must choose one of the following training tracks in order to meet the requirement. Work with your procurement professionals and supervisors in order to choose the training track that best fits.

CHOOSE ONE:



Modules in CM201 Training Track:

- M1: Chapter 4-Contract Requirements
- M2: Chapter 5-Contract Type
- M3: Chapter 7-Increasing Influence
- M4: Chapter 8-Developing Requirements
- M5: Chapter 9-Bidder Objections
- M6: Chapter 10- Contract Close Out

Resources found in modules (M1-M6):

- ✓ Requirements Checklist Goods (M1)
- ✓ Requirements Checklist Services (M1)
- ✓ Risk Monitoring Template (M2)
- ✓ Contract Summary Checklist Goods (M3)
- ✓ Contract Summary Checklist Services (M3)
- ✓ Kickoff Meeting Checklist (M3)
- ✓ Informal Process to Resolving Disputes (M5)
- ✓ Contract Closeout Checklist (M6)
- ✓ Lessons Learned Checklist (M6)

OR



Modules in CM301 Training Track:

- M1: Chapter 4- SLAs & KPIs
- M2: Chapter 5-Complex Risk
- M3: Chapter 7- Complex Management
- M4: Chapter 8- Modifications
- M5: Chapter 9-Dispute Resolution
- M6: Chapter 10- Closeout & Termination

Resources found in modules (M1-M8):

All of the resources from CM201, plus

- ✓ Requirements Checklist Hybrid (M1, M3)
- ✓ Contract Management Checklist (M3)
- ✓ Change Management Checklist (M3)
- ✓ When Issues Persist Checklist (M5)
- ✓ Contract Termination Checklist (M6)
- ✓ Contract Termination Language (M6)

OR



Modules in CM401 Training Track:

- M1: Chapter 4- Developing SLA's & KPIs
- M2: Chapter 5- Complex Risk
- M3: Chapter 6- Award Bidder Objections
- M4: Chapter 7- Complex Governances
- M5: Chapter 8- Complex Modifications
- M6: Chapter 9- Dispute Resolution
- M7: Chapter 10- Exit Management

Resources found in modules (M1-M7):

All of the resources from CM201 and CM 301, plus

- ✓ Strategic Relationship Requirements Tool (M1)
- ✓ Approach to Negotiating Redlines (M4)
- ✓ Bidder Issues List (M4)
- ✓ Negotiation-Action Tracking Spreadsheet (M4)
- ✓ Sample Governance Contract Terms (M5)
- ✓ Transition Plan Checklist (M6)
- ✓ Exit Management Plan Checklist (M7)

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Glossary of Terms

A

Acceptance—Law.com defines acceptance as:

n. 1) receiving something from another with the intent to keep it, and showing that this was based on a previous agreement. 2) agreeing verbally or in writing to the terms of a contract, which is one of the requirements to show there was a contract (an offer and an acceptance of that offer). [...] 3) receiving goods with the intention of paying for them if a sale has been agreed to. 4) agreement to pay a bill of exchange, which can be an “absolute acceptance” (to pay as the bill is written) or “conditional acceptance” (to pay only when some condition occurs such as the shipment or delivery of certain goods). “Acceptance” is most often used in the factual determination of whether a contract was entered.

[See: [Law Dictionary](#).]

Administering a Contract—Ensuring that the administrative functions of contract management are completed. This ranges from receiving invoices to properly closing the contract out of the Agency’s contract management system.

Agency—Any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW **28B.10.016**, and correctional and other types of institutions. [See: RCW **39.26.010 (1)**.]

Agreement—Another term for contract.

Apparent Successful Bidder—The lowest responsive and responsible bidder as determined by the bid evaluation process and prior to bidder negotiations.

Approval—The act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another. “Approval” implies knowledge.

Award—This is a phase within the contract life cycle. Activities include; the Competitive Solicitation procurement process [see RCW **39.26.120**, the exceptions RCW **39.26.125**, and the Sole Source contracts RCW **39.26.140**], negotiating (where permissible) with successful bidders and contract execution.

B

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C

Champion—A champion is the person who “cheers on” the project by providing some level of executive support.

Change Control Process—A change control process includes the contract terms and Agency policies and procedures to change an existing contract pursuant to applicable laws and policies.

Clarifying Questions—Open-ended questions that allow the speaker to talk at length about a topic. These questions are expansive and help you mine for information in a gentle way.

Competitive Solicitation—A documented formal or informal process that provides an equal and open opportunity to bidders and results in a selection based on predetermined criteria. [See: RCW **39.26.120**.]

Conditional Acceptance—Also referred to as qualified acceptance, conditional acceptance happens when the Agency (offeree) to whom an offer has been made tells the offeror (vendor) that it is willing to agree to the vendor’s offer *provided that some changes are made in the offer’s terms or that some condition or event occurs (such as meeting a contract requirements)*. [See: West’s Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.]

Contract Management—Includes three functions. Administering—ensuring that the administrative functions are completed, ranging from receiving invoices to properly closing the contract out of the Agency’s contract management system. Monitoring—ensuring that the parties perform their obligations, such as regularly checking that the Agency is paying all properly received invoices after the provider demonstrates work is complete. Managing—ensuring the relationship between the Agency and the vendor aids in meeting business objectives, such as meeting standard performance objectives.

Contract Manager—For the purpose of this manual, anyone who has some responsibility to manage contracts on behalf of an Agency.

Contract Negotiations—Applies generally to competitive procurement and non-competitive contracts or sole source contracts. All references to “negotiations” means negotiations conducted within the parameters of the Competitive Solicitation laws.

Contract Personnel—For the purpose of this manual, includes Contract Managers and Contract Professionals.

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Contract Professional—For the purpose of this manual, anyone who has some responsibility for the solicitation process, including writing contract language on behalf of an Agency (regardless of job title).

Contract Risk—The probability of loss to the vendor from a buyer terminating a valid contract, and/or the probability of loss to either party from failure in contract performance.

Corrective Action Plan—Part of a formal notice process to the vendor of noncompliant performance that requires the vendor to develop a formal plan to correct noncompliant performance.

Cure—Part of a formal notice process to the vendor of noncompliant performance, which will trigger a formal response from the vendor to correct the noncompliant performance.

D

Dispute—A contractual disagreement or misunderstanding between contracting parties specific to contract provisions or language. [See: CM 101 Module 4, referencing the National Institute of Government Purchasing.]

E

Express Acceptance—When a person clearly and explicitly agrees—verbally or in writing—to an offer or agrees—verbally or in writing—to pay a draft (bill or invoice) that is presented for payment in exchange for goods delivered or services rendered. [See: West’s Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.]

F

Federal Acquisition Regulation (FAR)—Regulations that apply to federal acquisitions.

G

Governance—There are two definitions of governance. (1) Governance provides consistent management supported by cohesive policies and decision-making rights that allow the parties to cooperate for the duration of the contract. A structure functions irrespective of the parties’ personnel. (2) Governance is the internal Agency (and/or interagency) decision-making process for high risk, highly complex contracts. These contracts are typically Information Technology contracts that include the OCIO.

For the purpose of this manual, governance will mean the first definition.

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H

Hybrid-Contract—A contract that combines terms and conditions for two distinctly different purchases into one contract with one vendor. For example, the purchase of a good (physical item) and service (on-going maintenance) from the same vendor is a hybrid-contract.

I

Implied Acceptance—Acceptance that is not directly stated but is *demonstrated* by any acts indicating a person’s agreement to the offer. For example, implied acceptance happens when a shopper selects an item in a supermarket and pays for it. [See: West’s Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.]

Indemnification—A clause that obligates one party (the “indemnitor”) to compensate the other party (the “indemnatee”) for losses or damages (physical injury or monetary) caused by that other party.

Influence—Tools and actions you choose to subtly exert your source of power to persuade. It is an effective and collaborative way to get people to change positions, attitudes, and beliefs so that both of you can achieve the common goal of reaching a favorable agreement.

Information Technology—Includes, but not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications, requisite system controls, simulation, electronic commerce, radio technologies, and all related interactions between people and machines. [See: RCW **43.105.020**.]

Intellectual Property—Property (such as an idea, invention, or process) that derives from the work of the mind or intellect; also, an application, right, or registration relating to this.

International Association of Contract and Commercial Management (IACCM)—International Association for Contract and Commercial Management enables organizations and professionals to achieve world-class standards in their trading relationships. [See: <https://www.iaccm.com/>]

J

K

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Key Performance Indicator (KPI) —A KPI is either a metric or a Service Level Agreement (SLA) that is critical to the Agency to track to determine the overall performance of a high value or high-risk contract. For example, on-time delivery can be a KPI for a vendor that delivers mission critical services to the Agency and those it serves. Highly complex, high-value and/or high-risk contracts should consider tracking three to five KPIs on a quarterly basis.

L

Legal Risk—The risk of loss to an institution that is primarily caused by:

- (1) A party's failure to comply with statutory or regulatory obligations;
- (2) A defective transaction;
- (3) A claim (including a defense to a claim or a counterclaim) being made or some other event occurring which results in a liability for the institution or other loss (for example, as a result of the termination of a contract);
- (4) Failing to take appropriate measures to protect assets (for example, intellectual property) owned by the institution; or
- (5) Change in law.

[See: ([Legal Risk in the Financial Markets](#)). Roger McCormick. "Legal Risk in the Financial Markets," Oxford University Press.]

Limitation of Liability—A limitation on the amount one party pays the other party in the event of a breach of contract. The limitation may restrict the types of loss recoverable or the remedies available or imposes a short time frame in which damages are recoverable.

Liquidated Damages—Damages whose amount is agreed upon by the parties to a contract as adequately compensating for loss in the event of a breach of contract, based upon good faith effort to estimate the actual damage that will probably ensue from a breach of contract.

M

Managing a Contract—See **Contract Management**.

Master Contract—A contract for specific goods or services, or both, that is solicited and established by the department in accordance with procurement laws and rules on behalf of and for general use by agencies as specified by the department. [See: RCW **39.26.010(15)**; RCW **39.26.080**] A Master Contract is solicited and established by DES in

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accordance with laws and rules on behalf of and for general use by Agencies as specified by DES. [RCW **39.26.010(16)**]. DES conducts a Master Contract competitive procurement that results in the selection of vendors that are pre-approved to be on the Master List.

Metric—An objective unit of measurement for some form of performance that the Agency is seeking. On-time delivery of any good or item is a metric. The organization can document the expected delivery date and verify that the good or service arrived on, before, or after that delivery date. Simpler contracts will have metrics.

Monitoring a Contract—Ensuring that the parties perform their obligations, such as regularly checking that the Agency is paying all properly received invoices after the provider demonstrates work is complete.

N

NCMA—National Contract Management Association is a professional association dedicated to the profession of contract management. [See: [National Contract Management Association](#).]

Negotiate—Negotiation, as used in this manual and the training modules, allows people with the delegated authority to discuss contract terms with a vendor within the purview of all applicable laws and is conducted within the parameters of the Competitive Solicitation Laws. If you are uncertain about the legal permissibility of any negotiations, stop and seek advice from Agency leadership and/or the Assistant Attorney General.

O

Office of the Chief Information Officer (OCIO)— See: [Starting an IT Project](#).

Original Equipment Manufacturer (OEM)—A company that produces parts and equipment that may be marketed or sold by another manufacturer or distributor.

P

Performance-based Contracting—A written document detailing an agreement between parties and identifying expected deliverables, performance measures or outcomes with payment contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include, but are not limited to, consequences and/or incentives to ensure that agreed upon, value to the state is received. [See: Office of Financial Management Glossary, SAAM. See: RCW **39.26.180(3)**]

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Pre-award—A phase within the contract life cycle. Typically, the Agency is working with stakeholders to develop the requirements and initiate a solicitation. Activities include defining the scope, product, or service, vendor, market review, budget, procurement documents and drafting the contract.

Post-award—A phase within the contract life cycle. Typically, the Agency is administering, monitoring and managing the parties to obtain business objectives in the delivery of the goods and/or services. Activities include; implementation, documentation, contract changes and payment.

Q

Quality Assurance (QA) —Includes audits or other procedures to verify or validate performance standards.

Quality Assurance Surveillance Plan (QASP)—A federal government developed and applied document used to make sure the systematic quality assurance methods are used in the administration of the Performance Based Service Contract (PBSC) standards included in the contract and in subsequent task orders.

R

Redlining—The process of editing contract terms is sometimes referred to as “redlining” the document as Word uses colored lines to track changes to a document.

Relationship Management—Ensuring the relationship between the Agency and the vendor aids in meeting business objectives, such as meeting standard performance objectives.

Request for Information (RFI)—A pre-solicitation, pre-award process for collecting information about vendors and their services to meet an Agency’s business objective. It is not an acquisition method; do not substitute an RFI for the competitive solicitation process.

Request for Proposal (RFP)—One of many forms of competitive solicitation for requesting bidders to propose a solution and cost to provide goods and/or services for the Agency.

Risk—The possibility that an event will occur and adversely affect the achievement of objectives.

Risk Event—The occurrence of a risk and associated loss.

S

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Scope of Work—The description of work incorporated in the contract. [See also Statement of Work. These terms may be used interchangeably.]

Scorecard—An approach for both parties to measure the overall performance of a contract. A scorecard tracks metrics, including Service Level Agreements and Key Performance Indicators.

Service Level Agreement (SLA)—There are two definitions for Service Level Agreement. (1) SLAs formally define particular aspects of the service, such as the quality, quantity, and other service related responsibilities. It is a metric. For the purpose of this manual, this definition does not include software maintenance agreements, or cloud services agreements. (2) An SLA is part of a service contract where a service is formally defined.

For the purpose of this manual, SLAs will mean the first definition.

Sole Source—A vendor providing goods or services of such a unique nature or sole availability at the location required that the vendor is clearly and justifiably the only practicable source (best source) to provide the goods or services. Note – As a reminder there is a direct buy threshold. You can purchase below that threshold. There are multiple exemptions to the Sole Source criteria. See Policy DES#-140- 00 for a detailed list and explanation of these exemptions.

Solicitation—Another term used to request bids from the business community to perform work for the Agency. [See: Competitive Solicitation RCW **39.26.120**.]

Stakeholder— A person, group or organization that has interest or concern in an organization. Stakeholders can affect or be affected by the organization's actions, objectives and policies. [See: BusinessDictionary.com.]

State Administrative & Accounting Manual (SAAM)—The State Administrative & Accounting Manual, also known as SAAM, provides control and accountability over financial and administrative affairs of the state of Washington, and assists agencies in gathering and maintaining information needed for the preparation of financial statements. The policies and procedures in this manual are the minimum requirements that state agencies must meet. An Agency may adopt additional policies and procedures in greater detail as long as the Agency meets the required minimum standards. [See: [SAAM Manual](#).]

Statement of Work—The description of work incorporated in the contract. [See also Scope of Work. These terms may be used interchangeably.]

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Subject Matter Experts (SME)— Agency employees, consultants, or advisers who are experts in a particular knowledge area.

T

U

V

Value—A regard that people hold for something. People often place a value relative to the worth, merit and/or utility of something, whether tangible or non-tangible. Value has both objective and subjective characteristics.

Vendor—An entity that provides goods and/or services.

W

Waiver of Subrogation—An agreement between two parties in which one party agrees to waive subrogation rights against another in the event of a loss. The intent of the waiver is to prevent one party's insurer from pursuing subrogation against the other party. Subrogation occurs when an insurance company pays its insured and then sues the entity or person responsible for the loss to recover the amounts paid to their insured. [See: West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.]

Warranty—A written statement of good quality of merchandise, clear title to real estate or that a fact stated in a contract is true. An "express warranty" is a definite written statement and "implied warranty" is based on the circumstances surrounding the sale or the creation of the contract. [See: [Law Dictionary](#).]

X

Y

Z

Chapter 1 Welcome and Program Introduction

Welcome to WA-State Contract Management Training (CM) Tracks 102, 201, 301 and 401.

This is a new upper level training series developed to provide skills in performance-based contracting that specifically apply to how a contract is administered, monitored and managed.

To receive credit for completing a training track, you will need to score 80 percent or higher on the module exam. The exam will begin at the end of each module, and once you have successfully completed all of the modules and exams in your track, you will receive a WA-State Contract Management certificate of completion and accomplishment.

The manual can be accessed at: [DES.WA.GOV](https://des.wa.gov) . Use the search bar to search for: WA-State Contract Management Training Manual. There is a PDF version for easy searching as well as a protected word document for copying and pasting ease.

Disclaimer:

As of March 2018, when this manual was drafted, all materials and RCWs referenced were current. Updated course work will be made available when revisions are needed. As always, confirm with current RCW references.

WA-State Contract Management 101

WA-State Contract Management 101 is the prerequisite for the following new training tracks in contract administration, monitoring and management.

How do I know if I need to take WA State Contract Management 101?

To determine if you need this course see detailed information on [training types by job duty](#).

If you have not already completed WA-State Contract Management 101, complete WA-State Contract Management 101 and WA-State Purchasing and Procurement Ethics prior to starting the above referenced WA-State Contract Management training tracks.

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What is a Training Track?

Training tracks are a series of eLearning modules, lasting 15 to 30 minutes. To complete the eLearning module, you will pass a multiple-question exam. All training tracks follow this workbook and have online tools listed in Appendix B. The training tracks are developed and provided based on the complexity and risk of the contract you manage.

WA-State Contract Management 102 (CM 102 Training Track Pre-work)

Prior to starting your training track, you will need to complete the three modules in CM 102 Pre-work.

WA-State Contract Management 201, Basic Contracting with Low Risk Contracts (CM 201)

This six-module training track follows the Contract Management 101 course and the Contract Management 102 track. It offers techniques aimed at basic contract administration, monitoring and relationship management for low risk contracts. This training covers areas such as, defining simple requirements, introduction to risk, basic monitoring during the life of the contract, changes to the contract, non-legal disputes, and contract close out. Attendees for this course are those who create, or help create, administer, manage or monitor less complex, low-risk contracts. Supervisors who manage team members administering low-complexity contracts need to take this class, as well.

WA-State Contract Management 301, Intermediate Contract Administration for Medium Risk Contracts (CM 301)

This six-module training track offers techniques aimed at advanced contract administration, monitoring and relationship management for medium-risk contracts. This training track covers areas such as hybrid statements of work, risk, metrics to monitor vendor performance, monitoring a complex contract, contract modifications, dispute resolution, termination, and contract closeout. Attendees for this training track are those who create, or help create, administer, monitor and manage vendor relationships with medium-level complexity or risk. These individuals (sometimes referred to as project managers, program managers, managers, business leaders or contract managers) are often the titles or roles associated with individuals involved in these types of contracts. Those who supervise team members managing medium complexity contracts are also required to take the training.

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WA-State Contract Management 401, Advanced Contract Management, High Risk (CM 401)

This seven-module training track focuses on supporting those who draft, negotiate, administer, monitor and manage more multidimensional high-risk contracts. This course covers provisions to include in complex contracts, such as complex metrics, Service Level Agreement (SLA) and Key Performance Indicator (KPI) structures, complex governance structures, and exit management techniques. Attendees are those who create, administer, manage, negotiate on behalf of the Agency or monitor contracts with a high degree of complexity or risk. These individuals may be referred to as “Contract Professionals.” Contract Professionals play a critical role in ensuring that contracts have the language needed to manage the vendor. Also, project managers, program managers, managers, business leaders or contract managers who manage and monitor these complex contracts, as well as those who manage the highest risk contracts for the Agency, are required to take this training.



The principle goal of contract management is to achieve the business objectives from the vendor relationship *and to deliver that benefit to the State, all functions that touch the contract throughout the contract life cycle need to contribute to deliver business objectives.*



Your key to success lies in your ability to properly administer, monitor and manage commercial relationships to deliver business objectives to the state through the Agency, and those it serves. Please understand: if your Agency has any vendor working for it, someone will be administering, monitoring and managing that relationship. *If you are reading this manual, that someone is you.*

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Number 1

This advanced Contract Management training series includes principles and practices that apply to all state Agencies that are subject to the procurement of goods and services requirements of RCW **39.26**. *(Please note that public works projects are not included within the scope of this Contract Management training series).*



The principles and practices of this advanced Contract Management training series must be applied only in the context of compliance with the state procurement law (RCW **39.26**) and policies adopted by DES to implement state procurement law. This training series does not provide legal advice regarding interpretation or application of RCW **39.26** or DES procurement policies. Please ensure you are familiar with these legal restrictions on procurement prior to applying the principles and practices of this Contract Management training series.

Generally, RCW **39.26** provides the legal parameters of the umbrella under which the principles and practices of this advanced Contract Management training series must be applied. While this training series does not provide legal advice on interpretation or application of RCW **39.26**, it is helpful to begin with a brief summary of its application to state agencies.

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Under RCW **39.26**, all authority for the purchase of goods and services by most state Agencies (except for those agencies statutorily exempt) is delegated to the Department of Enterprise Services (DES). DES, in turn, may delegate purchasing authority to agencies based on a risk assessment determination. Any delegation of purchasing authority by DES is subject to compliance with RCW **39.26** and DES procurement policies.

Under RCW **39.26**, all procurements for goods and services must be based on a competitive solicitation process. This same requirement “applies to contract amendments that substantially change the scope of work of the original contract or substantially increase the value of the original contract.”

Conducting a competitive solicitation begins with the development of the underlying solicitation documents that will be used to notify potential bidders of what the Agency is seeking to procure. The solicitation must describe the scope of the procurement, the technical and business requirements (including required contract language), and the predetermined process and criteria for selecting a winning bidder (evaluation and award criteria). This must include the requirements necessary to determine whether a bid is responsive, any requirements for determining a responsible bidder, and any “best value criteria” other than price to be used in determining the winner. Once the bids are received and reviewed, the Agency may reject all bids (abandon the solicitation or start over), award one or more bidders a contract, or request bidders submit a revised bid through a Best and Final Offer (BAFO).

These requirements place restrictions on the negotiation of contract provisions with bidders. First, once the bidder submits a bid, the bidder generally is not allowed to change the price or other material terms of the bid until after identification of a lowest responsive and responsible bidder, unless all bidders are requested to do so in a formal Best and Final Offer (BAFO) process clearly described in the solicitation documents.

Second, the Agency should think about how to communicate with bidders during the evaluation process so that all bidders are given a fair and equal opportunity to explain their bid. Agencies can communicate with bidders in order to clarify the terms of their bid and how the bid will meet the requirements of the solicitation. This includes both the technical requirements and the business terms of the proposed contract. These clarifying communications can become very detailed, and the results may be incorporated into a final contract. In more complex transactions, these clarifying discussions are built into the solicitation. However, Agencies may not begin negotiations on a final agreement with a bidder until it identifies the lowest responsive and responsible bidder.

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Third, even after identification of the lowest responsive and responsive bidder at the end of the evaluation, the Agency still is not authorized to negotiate material changes to the solicitation or a bid that increase the scope of work or value of the contract beyond that specified in the solicitation. This means that just as an Agency is prohibited from negotiating contract amendments that substantially increase the scope of work or substantially increase the value of an original contract, the Agency and bidder are generally prohibited from agreeing to an initial contract that materially varies from the scope, work or price stated in the solicitation or bid.

Within these limitations, there remain matters potentially subject to negotiation. An Agency may enter into negotiations with that bidder “in order to determine if the bid may be improved.” This means, for example, that an Agency may negotiate with the lowest responsive and responsible bidder in order to *decrease* the price, but not to *increase* the price. In addition, many terms of the transaction usually are not “material.” This will vary from transaction to transaction. Examples include delivery dates, payment dates and performance milestones. If you have a question about whether a term is “material,” you should consult with your contract practitioner and assigned AAG.

However, “an Agency may not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.”¹

Number 2

Additionally, to the extent practicable, RCW **39.26.180(3)** requires Agencies enter into performance-based contracts that identify expected deliverables, performance measures or outcomes, and appropriate techniques to ensure that agreed upon value to the state is received. These techniques may include, but are not limited to, positive and negative incentives to encourage vendor performance.

Number 3

Finally, once a contract is awarded it must be properly managed and administered consistent with DES policies and procedures, and the internal control requirements established by the SAAM. Under RCW **39.26.110**, DES must establish training and/or certification programs to ensure consistency in the procurement practices for Agency employees authorized to perform procurement functions under RCW **39.26**.

¹ RCW 39.26.160(6)

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This manual and the Contract Management training series (CM 102, CM 201, CM 301, CM 401) provides additional information, principles, tools and best practices training, skill development and coursework to Agency employees who manage, procure, purchase, execute and/or have Agency oversight of purchasing or procurement from across the state. The goal of this program is to improve contract management, administration and monitoring so that regardless of the contract (large or small, simple or complex) the state obtains the benefit of its contract bargain.

Enhanced Skill Set

Post-award contract management has not received sufficient focus as a value preserving activity to properly steward state, federal and other funds. Contract management requires *specific training* because post-award contract management includes a range of consistent tasks from simple to complex, depending on the type of vendor relationship.

Three Audiences and Their Learning Objectives

It is not possible currently to definitively outline each person's role, responsibilities and associated titles when managing contracts for the State of Washington. This training series and this manual can provide overarching guidance to anyone who is asked to administer, monitor or manage a contract.

There are three audiences for the Contract Management training sessions and this manual.



CM 201 learning objective is to promote a better understanding of and foster an enhanced skill set to provide a minimum level of contract administration, monitoring and management to ensure that the state meets its business objectives.



CM 301 learning objective is to promote a better understanding of and foster an enhanced skill set to provide a range of contract management support for medium level risk contracts to ensure that the state meets its business objectives.



CM 401 learning objective is to promote a better understanding of and foster an enhanced skill set to those who prepare, document, negotiate and execute the contract ("Contract Professional") to better support to those who administer, monitor and manage contracts to ensure that the state meets its business objectives.

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How To Use This Manual

1. The tracks (102, 201, 301 and 401) each have a color assigned to it. The color surrounds the frame of the eLearning slide.
2. We encourage you to follow along in the manual as you proceed through the training. Add what notes or questions you may have.
3. As you take each module exam, the exam response will reference back to the manual providing the location of the exam responses.
4. The Learning Track Table of Contents provides the training track content you will need to complete. You can use the table of contents as your learning plan.

Symbols



WA State Contract Management 102 (Training Track Pre-work) Three Modules. Prior to starting your training track, you will need to complete the pre-work.



WA State Contract Management 201, Basic Contracting with Low Risk Contracts. This six-module training track follows the Contract Management 101 course and offers techniques aimed at basic contract administration, managing, and monitoring for low risk contracts. This training covers areas such as; defining simple requirements, risk, basic monitoring during the life of the contract, changes to the contract, disputes, and contract close out. Attendees for this course are those who create, or help create, administer, manage or monitor less complex, low risk contracts. Supervisors who manage team members who administer low-complexity contracts may need to take this class as well.

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WA State Contract Management 301, Intermediate Contract Administration for Medium Risk Contracts. This eight-module training track offers techniques aimed at advanced contract administration, monitoring, and managing for medium risk contracts. This training track covers areas such as hybrid statements of work, risk, metrics to monitor vendor performance, monitoring a complex contract, contract modifications, dispute resolution, termination and contract closeout. Attendees for this training track are those who create, or help create, administer, manage or monitor contracts with medium level complexity or risk. These individuals sometimes referred to as project managers, program managers, managers, business leaders or contract managers are often the titles or roles associated with individuals involved in these types of contracts. Those who supervise team members who manage medium complexity contracts are also encouraged to take the training.



WA State Contract Management 401, Advanced Contract Management, High Risk. This seven-module training track focuses on supporting those who draft, negotiate, administer, monitor and manage more multidimensional high-risk contracts. This course covers provisions to include complex contracts, such as complex metrics, SLA and KPI structures, risk, complex governance structures, advanced financial structures, and exit management techniques. Attendees are those who create, administer, manage, negotiate on behalf of the Agency or monitor contracts with a high degree of complexity or risk. These individuals may be referred to as “Contract Professionals”. Contract Professionals play a critical role in ensuring that contracts have the language needed to manage the vendor. In addition, project managers, program managers, managers, business leaders or contract managers who manage and monitor these complex contracts are encouraged to attend.



This icon represents the chapter’s goal for all learners.

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This icon represents the expected outcome(s) from the chapter's topics.



This symbolizes the contract life cycle.



This icon makes an important point and may ask you to stop and contact your Contract Professional or Agency leadership.

Coaching Questions

Finally, the coaching questions support those who mentor their teams. There are too many expectations placed on people who negotiate and manage increasingly complex contracts. Additionally, many contracting professionals have little prior experience in complex negotiations.

“Coaching Questions” is a list of questions that you can ask a team member when they come to you with a problem or issue. Material in the corresponding section can aid in discussing the answers to their questions.

Chapter 2 Introduction and the Connection Between the Acquisition Approach, Contract Type, and Level of Contract Management



Expand the contract manager's role from processing paperwork to ensuring that business objectives are being met.



Recognize that vendors meet the Agency's business objectives, so the Agency can deliver its mission to the community it serves.

The Contract Manager's Role

The role of managing contracts is more inclusive than processing paperwork. If the vendor does not meet its obligations, then it is likely that the Agency cannot meet its obligations to those it serves. The Agency's obligations to the community are translated into business objectives. Business objectives can range from:

- Ensuring needs of the people the State serves are met in a timely, safe and efficient manner;
- Ensuring regulatory compliance;
- Ensuring fiscal responsibility and accountability to all the funding sources the State works with; and
- Many more depending on your Agency's mission.

Vendors must meet their obligations to ensure that the Agency's business objectives are met. Vendors must be held accountable for their performance, and the only way to ensure performance is to monitor the vendors' performance. And in some of the more complex contracts, the contract manager must ensure that the Agency meets its obligations to the vendors. As such, the contract manager's role needs to expand from processing paperwork to ensuring that business objectives are being met.

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Striving for Value by Managing Risk

To rethink “value” you need to understand that it is more than getting the “best price.”

It means getting the maximum performance from the vendor at the negotiated price for that service or good. It means defining value more expansively than negotiating aggressively on price. Value may include many different things depending on the Agency’s goals and the circumstances at hand. The Contract Manager’s role ensures that the Agency receives value from the vendor.

For Example

Let’s say that your Agency orders deicer chemicals from a vendor to use on office property sidewalks and parking lot. The paper the agreement is written on is not enough to ensure that deicer chemicals are delivered on time, in the right quantity and at the right location. There is always a risk that the vendor may not deliver the right deicer chemicals or may deliver the right deicer chemicals later than needed, or may deliver the right deicer chemicals at the right time to the wrong location. Those are risks (wrong deicer chemicals, wrong time, and wrong location) that need to be managed. Properly monitoring the vendor’s performance to manage those risks ensures value to the Agency, and to the State of Washington.

To ensure that the Agency receives value, the people who manage contracts actively manage risk. But relying on the paper contract alone to manage risk (the right chemicals delivered on time) is misplaced trust. The document spells out the roles, responsibilities and obligations each party has to the other. The Contract Manager at some level must personally monitor and verify that the vendor is performing. And, if the vendor is not performing, it is the contract manager’s role to create a series of communications with documentation to ensure performance (i.e. manage the risks to the Agency and the State of Washington).



Relying on the paper contract alone to manage risk is misplaced trust. The contract manager, at some level, must personally monitor and verify that the vendor is performing. And, if the vendor is not performing, it is the contract manager’s role to create a series of communications with documentation to ensure performance (i.e. manage the risks to the Agency and the state).

Taking Ownership

Each and every person working for the state performs duties that provide value to the Agency and those the Agency serves. Your role in the Agency is critical to the Agency’s mission to the citizens of Washington State. Every Agency staff person who interacts with vendors represents the Agency. *There are many roles that define the duties of*

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contract management, but—and this is key—the position title may not include “Contract Manager.” Nevertheless, if you are reading this manual you are performing important contract management duties.



Recognize that your role includes contract management duties for the Agency, whether you work with one small vendor per year or work with dozens of large vendors.

Contract Managers take ownership of the:

- **Contract documentation;**
- **Understandings, intentions and obligations each party is making to the other party;**
- **Terms and conditions outlined in the contract, and/or the statement of work to be performed and the delivery schedule for that work; and**
- **Benefit to the state’s stakeholders, including colleagues, leadership and any individuals the Agency serves.**

Three Major Contract Life Cycle Phases

Within the contract life cycle there are three phases. They are:

1. **Pre-award—Procurement and contract development, working with internal stakeholders to develop the requirements. Activities include defining scope/product/service, vendor/market review, budget, procurement documents, draft contract. Another critical activity is working with internal stakeholders to develop the contract requirements.**
2. **Award—Contract execution, negotiating and executing the contract with vendors to reach an agreement which will be documented in the contract. Activities include proposals, bids, evaluation, award, contract negotiation (where permissible) and signatures.**
3. **Post-award—Contract management, administering, monitoring and managing the parties to obtain business objectives in the delivery of the goods and/or services. Activities include kick-off meeting, implementation, documentation, contract changes and payment.**

Each of these phases has its own timing, purpose and goals. The phases are outlined in distinct sections and in the following chapters. The phases are also outlined in the

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training series, so individuals understand their role in each phase of the contract life cycle.

Three Functions of Post-Award Contract Life Cycle

Within the post-award contract life cycle phase, there are three functions. They are:

1. **Administering**—ensuring that the administrative functions are completed, ranging from receiving invoices to properly closing the contract out of the Agency’s contract management system.
2. **Monitoring**—ensuring that the parties perform their obligations, such as regularly checking that the Agency is paying all properly received invoices after the provider demonstrates work is complete.
3. **Relationship Management**—ensuring the relationship between the Agency and the vendor aids in meeting business objectives.

Contract Terms and Conditions are Important

The Contract Manager’s role is enhanced or limited by what is documented in the contract. Documenting all the appropriate terms and conditions for a contract is a much more difficult task than processing a template contract.

Those who “write” contracts are interconnected with those who manage contracts. If the contract manager would like to send a formal notice of noncompliant performance (“Cure” letter) to trigger a formal response from the vendor to correct the noncompliant performance (“Corrective Action”) but the contract does not contain Cure or Corrective Action terms, the contract manager can ask and hope for corrective performance. But, if those terms are not included in the contract, the contract manager cannot demand corrective performance. If the vendor does not correct the noncompliant performance, the contract manager’s options may be limited to accepting the noncompliant performance or terminating the relationship.

More importantly, non-lawyers are negotiating and managing almost all of the contracts for the state. As contract specifications, terms and conditions become more complex, Contract Professionals should use professional judgment to engage legal advisors to control risk of loss to the Agency.

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Every Agency has a process to seek legal advice from the Attorney General's Office. Contract Professionals should always follow that process. Agency leaders and Contract Professionals should use professional judgment when seeking legal advice to help control contract risk.

Coaching Questions



1. **Are you (in your role at your organization) seen as someone whose role is critical to the Agency's success in achieving its business objectives?**
 2. **If not, what one thing can you do or say when performing your duties as a contract manager to enhance the Agency's ability to reach its business obligations?**
-



1. **How can you work more closely with either the Contract Professional or stakeholder to outline the Agency's business goals so that vendors can better meet those goals?**
 2. **How comfortable are you in spending time to develop relationships with vendors? Or do you believe that it is not part of your job?**
-

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1. How much do you understand about the terms and conditions in your contracts to ensure vendor performance?
 2. What is the next step for you personally to take more ownership of the contract, obligations each party is making to the other party, the terms and conditions outlined in the contract, and/or the statement of work to be performed and the delivery schedule for that work to benefit the Agency?
-

Section I Pre-Award Phase



Principle Goal

The principle goal for the first phase of the contract lifecycle (Pre-Award) is to align business objectives for working with a vendor using an acquisition approach and contract type that reduces risk.

Section I has four chapters:

- Chapter 2: The Connection Between the Acquisition Approach, Contract Type, and Level of Contract Management
- Chapter 3: Increasing Your Influence with Stakeholders
- Chapter 4: Developing Contract Requirements
- Chapter 5: Identifying, Analyzing and Documenting Risk

These chapters will address the following contract management competencies:

- Assess the relationship type and the level of contract monitoring and management.
- Assess the type of relationship with the vendor(s) is in line with stated vendor relationship management processes and policies.
- Establish effective relationships, behaviors and governance mechanisms are in line with the type of relationship.
- Initiate the contract terms.
- Identify potential risks, and how to manage those risks.

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The Connection Between the Acquisition Approach, Contract Type, and Level of Contract Management



The goal of any Agency/vendor relationship is to meet the state's business objectives.



Your key to success is to enable the Agency's business, without incurring too much risk to the Agency.

Introduction

The goal of an Agency/vendor relationship is to meet the Agency's business objectives. Complexity comes in the "how." How does this vendor help the Agency reach its goals? The Contract Manager must enable business, without incurring too much risk. Therefore, the contract manager must have a range of skills to ensure success.

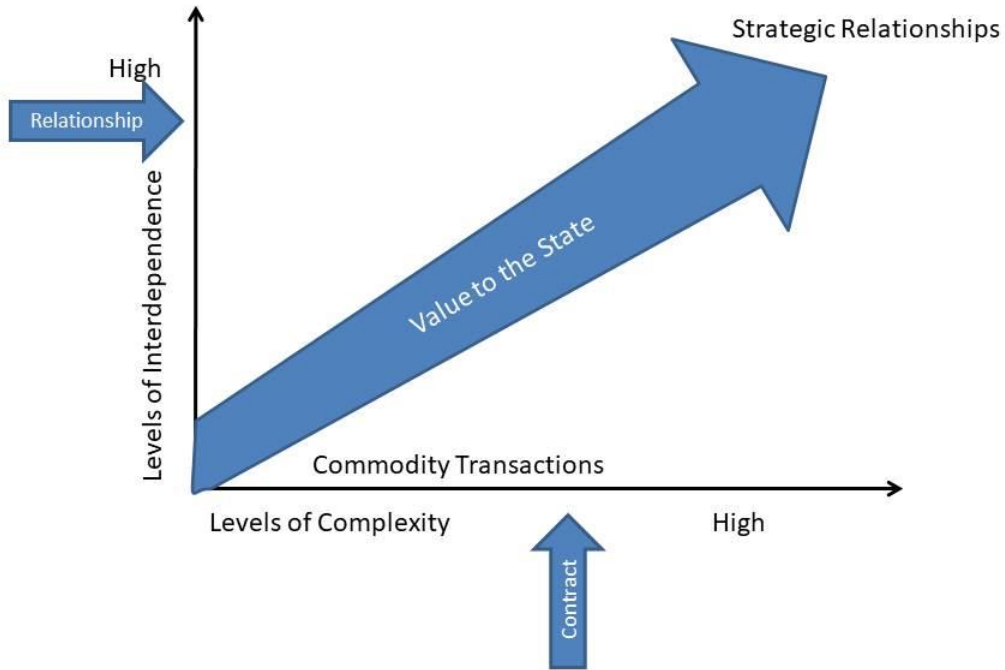
In business today, there exists a wide variety of Agency/vendor business relationship types. There also exists a wide variety of contracting methods to support the relationship type. There is also a connection between the contract goals and the level of contract management. Unfortunately, there is no global standard. Educators, consultants and organizations such as the National Contract Management Association and the International Association for Contract and Commercial Management have categorized several prevalent relationship and contract types.

The Acquisition Approach: Relationship and Contract Type

To understand what people mean by acquisition approach and corresponding contract type, it is helpful to think in the following terms:

1. Level of interdependency between the Agency and the vendor; and
2. The contractual complexity necessary to document the relationship obligations.

Acquisition Approach

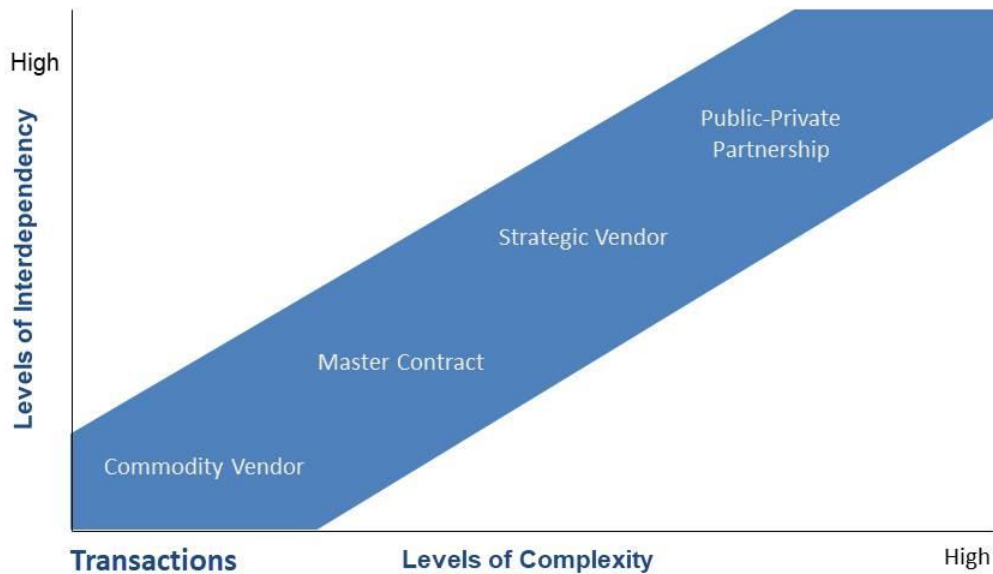


There are several acquisition scenarios ranging from simple commodity transactions, to highly complex, strategic initiatives. Although infinitely variable, these approaches share a common economic goal: Optimization. Regardless of the type of acquisition approach, the goal should be to drive vendor behaviors that provide the most value for the least cost. Unfortunately, too often, business people use the same arms-length buying mechanisms, template contracts and level of contract management for all sorts of transaction types, which sacrifice performance and diminish value to the Agency.

Acquisition Approach/Contract Type

There are several broad types of acquisition approaches.

Acquisition Approach



- **Commodity Vendors:** The vendor is not strategic or critical to the operation of the Agency. The vendor provides goods or simple services. Typically, a simplified contract is issued for every acquisition of the goods or services.
- **Master Contracts:** A contract for specific goods or services, or both, that is solicited and established by DES in accordance with procurement laws and rules on behalf of and for general use by Agencies as specified by the DES. [See RCW **39.26.010(15)**; RCW **39.26.080**]. A vendor may be pre-approved through a formal process to perform work under a Master Contract.
- **Strategic Vendors:** A relationship characterized by the Agency's desire for a strategic outcome from the vendor's work. To achieve the outcome, the Agency and vendor work in a more interconnected manner to meet the strategic outcome.
- **Public-Private Partnerships:** This vendor relationship is characterized by an executive-level relationship, shared information and close operational ties. It includes a high level of interdependence between the parties to be successful. Typically, public-private partnerships join forces to deliver major community projects.

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Within these models, Agencies can contract for transactions (or series of transactions), or performance-based outcomes.

Performance-Based Contracts

From RCW **39.26.180(3)** – “To the extent practicable, agencies should enter into performance-based contracts. Performance-based contracts identify expected deliverables and performance measures or outcomes. Performance-based contracts also use appropriate techniques, which may include but are not limited to, either consequences or incentives or both to ensure that agreed upon value to the state is received. Payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.”

Performance-based contracts are used in government and commercial settings to pay vendors upon performance of milestones or deliverables. Typically, performance-based contracts contain the following five critical components²:

1. Performance Work Statement (PWS) a.k.a. Performance-Based Statement of Work (SOW),
2. Quality Assurance Surveillance Plan (QASP),
3. Performance-Based Metrics,
4. Contractual incentives (positive and/or negative), and
5. The right pricing arrangement.

Traditionally, governmental performance-based contracts *have not been used to pay for vendor performance exceeding* contractual obligations, as do some commercial performance-based contracts.

However, there are some examples of governmental performance-based contracting relationships that pay vendors for performance that exceeds documented performance

² See Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 149.

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standards, such as the Federal Department of Energy's contract with Kaiser-Hill³ and the "Power by the hour" contract between the U.S. Air Force and Rolls Royce plc⁴.

Finally, Federal Acquisition Regulation Part 48 Value Engineering includes mechanisms to share savings with vendors that perform services more economically. When considering approaches to drive vendor performance to reduce costs to the Agency, consider the federal government's approach using FAR Part.48. FAR Part 48 contains both voluntary and involuntary provisions for vendors to pass cost savings along to the federal government.

FAR 48.101 General.

(a) Value engineering is the formal technique by which contractors may (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) be required to establish a program to identify and submit to the Government methods for performing more economically. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs.

Any Agency requirements passed to the vendor to perform more economically must be included in the solicitation and subsequent contract terms and conditions.

Within the state, performance-based contracts are used in a wide range of sourcing models ranging from simple transactions to strategic relationships. The Contract Manager will match the level of risk and contract management as defined below for performance-based contracts.

³ See "Making the Impossible Possible: Closing Rocky Flats" Radwaste Solutions. September/October 2005, pg 39. See also [Getting to We: Negotiating Agreements for Highly Strategic Relationships](#), and [The Vested Outsourcing Manual](#).

⁴ See Rolls-Royce announced a \$23 million support services and spares contract for AE 2100D3 engines with the U.S. Air Force. <http://www.defenseworld.net/news/2967/Rolls-Royce-awarded-a--23-million-support-services-and-spares-contract-for-C-130J-engine-support-to-Royal-Norwegian-Air-Force#.WiwGekqnE2w> "Power-by-the-hour" is used to describe support services to aircraft engines. For a fixed sum per flying hour, a complete engine and accessory replacement is provided, allowing the operator forecast costs with greater accuracy.

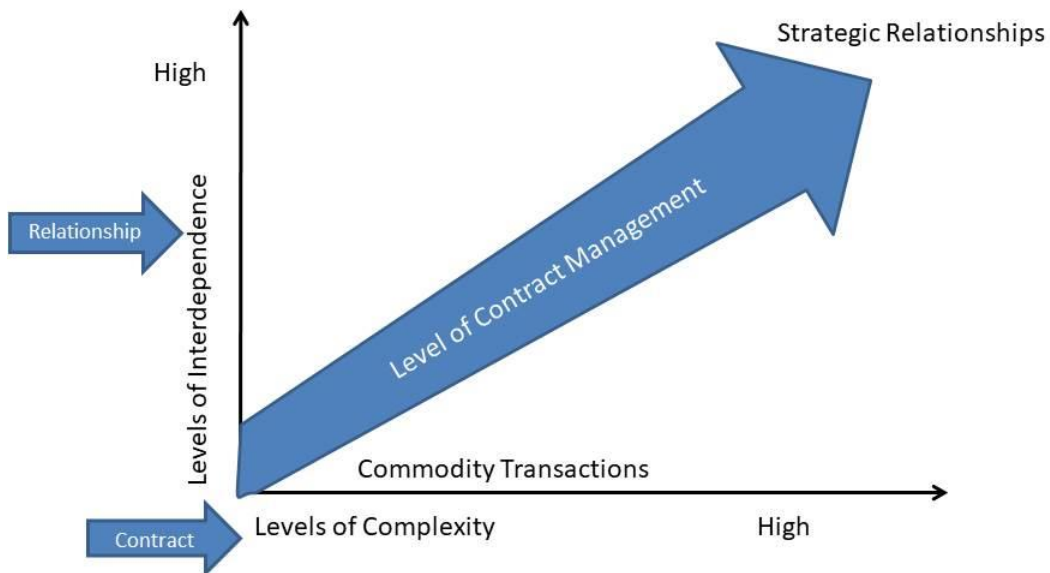
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Matching the Level of Contract Management to Acquisition Approach

Each vendor relationship will require its own level of contract management. The Contract Manager's goal will be to identify the appropriate level of administration, monitoring and relationship management for each of the contracts being managed.

It is important to understand the correlation between the level of contract management and the broader risk goals for each of the types of contract.

Level of Contract Management



1

Contract Management/Risk Goals

Commodity or Simple Transaction

The goal is to buy the good or service at the best possible price for simple performance goals.

Risk

Risk is limited and therefore dealt with in a template agreement of some sort. Risk can be mitigated by having more than one vendor performing the same service or providing the same good, by demanding compliance to Agency policies, or adherence to governmental regulations.

Contract Management

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1. Administration—Set up the contract in any contract and/or payment “system” to track invoices and payments.
2. Monitor—Ensure that the vendor delivers defect-free goods, and/or conforming services according to the contract requirements (technical specifications or statement of work).
3. Relationship Management—Ensure appropriate levels of communication with the vendor at all stages of the relationship (which tends to be limited).

Master Contracts

The goal of master contracts is to ensure certain goods and services contracts are established for general use by all Agencies, and that those contracts have met all procurement laws and rules. Generally, the master contract allows Agencies to aggregate their collective purchasing power before entering the market.

Risk

These agreements seek to document more complicated pricing structures and more complex risk events. Typically, the State of Washington spends time and energy on risk allocation (think in terms of Limitations of Liability or Indemnification clauses). The missing piece is operational risks. Smaller, less threatening, but pervasive operational risks can be overlooked.

Contract Management

1. Administration—Set up the contract in any contract and/or payment “system” to track invoices and payments. Payments are usually tied to progress or milestone dates associated with the performance of the contract. These payments require more monitoring.
2. Monitor—Ensure that the vendor continues to deliver defect-free goods, and or conforming services according to the contract requirements. In addition to technical specifications or statement of work, the contract will likely include performance standards, metrics or Service Level Agreements (SLA), milestone payments etc.
3. Relationship Management—Ensure appropriate levels of communication with the vendor at all stages of the relationship (which tends to be tied to performance or lack of performance).

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A Note about Sole/Single Source Vendors

There is a debate about the type of relationships to have with sole and single source vendors.⁵ Are they preferred, but not strategic? Are they strategic by the very nature of the limited number of other vendors to provide the goods or services to the Agency? These relationships require relationship management skills to ensure continued vendor performance.

The goal is to buy performance. In more complex sole source contracts, parties should agree on clearly defined performance standards and relationship management protocols.

Risk

These agreements may seek to document more complicated pricing structures and complex risk events by the very nature of using a single or sole vendor. Again, typically, the Agency spends a lot more time and energy on risk allocation (think in terms of Limitations of Liability or Indemnification clauses). And, the more prevalent risk issues are usually operational risks—those smaller, less threatening, but pervasive operational risks that can be overlooked when developing requirements.

Contract Management

1. Administration—Set up the contract in any contract and/or payment “system” to track invoices and payments. Payments are usually tied to progress or milestone dates associated with the performance of the contract. These payments require more monitoring.
2. Monitor—Ensure that the vendor continues to deliver defect-free goods, and or conforming services according to the contract requirements. In addition to technical specifications or statement of work, the contract will likely include performance standards, metrics or Service Level Agreements, milestone payments, etc.
3. Relationship Management—Ensure appropriate levels of communication with the vendor at all stages of the relationship (which tends to be more regular, such as monthly or quarterly meetings to discuss performance).

Strategic Vendor

These are a class of contracts that begin to grow in complexity to define the vendor’s product or service, level of performance and the incentives for performance and

⁵ See RCW 39.26.125; RCW 39.26.140; <https://des.wa.gov/about/projects-initiatives/procurement-reform/current-policies>

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Liquidated Damages for non-performance. They are also sometimes referred to as **outcome-based** contracts.

The legal and operational complexities mount as the vendor's operations become more intertwined with the Agency's operations to meet the Agency's strategic outcome.

Risk

These are the most complicated and riskiest because:

- **The price is not usually easily fixed because the parties may not be able to define with enough accuracy the goods or services.**
- **The risks are not easily understood, and the parties may not have a history of managing the risks inherent in the delivery of goods or services.** Each party will be taking on risks that it is not comfortable with.
- **The Agency may ask (overtly or implicitly) the vendor to make investments (money or capital expenditures) to the benefit of the state.** The supplier will be more willing to agree to the investment and to achieve the "outcome" or stretch performance metric, if the vendor can be reimbursed for the investment. (See the discussion above on Federal Acquisition Regulation Part 48 and its possible guidance in structuring shared savings in a contract. Again, any such cost sharing must be included in the solicitation and contract terms.)

Contract Management Rises to the Level of Governance

- Governance is a more engaged form of contract administration, monitoring and management. For the purpose of this manual and training courses, governance is limited to interactions between the Agency and the vendor, and does not include inter-agency governance.
- Governance structures provide consistent relationship management along with cohesive policies, processes and decision rights to allow the parties to work together more efficiently and collaboratively to reach outcomes.

Contract Language

The contract language should match the relationship type. It is not a one size fits all activity. When using your organization's templates, please work with a Contract Professional if a template needs modified to meet the needs of a more complex relationship.



When working with your organization's templates, please be aware of the templates' limitations. Work with a Contract Professional to get additional resources if a template needs modified to meet the needs of a more complex relationship.

Coaching Questions



1. Have you thought about the contract type for the contract(s) you manage?
 2. How does the contract type influence your duties to manage risk?
-



1. Have you asked your stakeholders at least one question to validate that the vendor relationship type matches their perception of the vendor's relationship with your organization?
 2. Would the vendor agree with the placement, or would they object claiming that they are told they are a partner and treated like a commodity?
-



1. If you are using a template, have you verified that the template elements match what will be needed for the relationship type?
 2. If there are identified deficiencies in the template language, how will you go about working with Agency leadership to develop an appropriate contract?
-



The goal is to increase Contract Personnel's influence with peers, leaders and the vendors' employees and leadership to drive vendor performance by understanding the business objectives and challenges.



The key to your success is to recognize and use your influence with peers, leaders and vendors' employees, and leadership to drive vendor performance.

Introduction

Getting multiple people to agree to approve a decision regarding a contract or vendor relationship you are managing doesn't have to be a chore. It can be, but it doesn't have to be. This chapter is designed to give Contract Personnel tools and techniques to talk to stakeholders in a way that helps Agency stakeholders make effective decisions with respect to vendor relationships.

Why Work with Stakeholders?

According to the IACCM "Collaborative problem solving requires that people feel included and involved. Legitimizing their individual concerns is a prerequisite, but managing their involvement on an ongoing basis can still be a challenge. In complex negotiations, especially, it is tricky to keep the stakeholders engaged. All have different interests and concerns that can cause them to defect from an emerging consensus at any time. To prevent this splintering, negotiators need to manage the agenda so that people know where they are at any given time." ⁶

Definition of Stakeholder

A stakeholder is "a person, group or organization that has interest or concern in an organization. Stakeholders can affect or be affected by the organization's actions,

⁶ Contract and Commercial Management. The Operational Guide. IACCM. Van Haren Publishing. 2011. Page 254.

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objectives and policies.”⁷ Executive Sponsors are also stakeholders because their roles can include providing resources, approvals, and budgeting. When considering your list of Agency stakeholders please include the Contract Manager and/or the Contract Professional. A stakeholder is not always a champion, but your champion should always be a stakeholder.

A champion is affected by the project and literally “cheers on” the project by providing some level of executive support.



A word of caution: The champion is not always the final decision maker (can say yes to you).

In fact, the person who can say yes may not agree with your suggestion regarding the issue, question, or concerns, especially if the suggestion does not consider that person’s business objectives.

Who Are Your Stakeholders and What Do They Care About? A Two Step Analysis

Step 1 Identify the Stakeholders and their Concerns

The first step in your analysis for increasing influence with stakeholders is to identify the stakeholders. Use the chart below to list their names, business objectives, and internal and external challenges. Below is the **CM 102 Stakeholder Analysis Tool**.

⁷ BusinessDictionary.com

Step 2 Identify Your Key Decision Makers

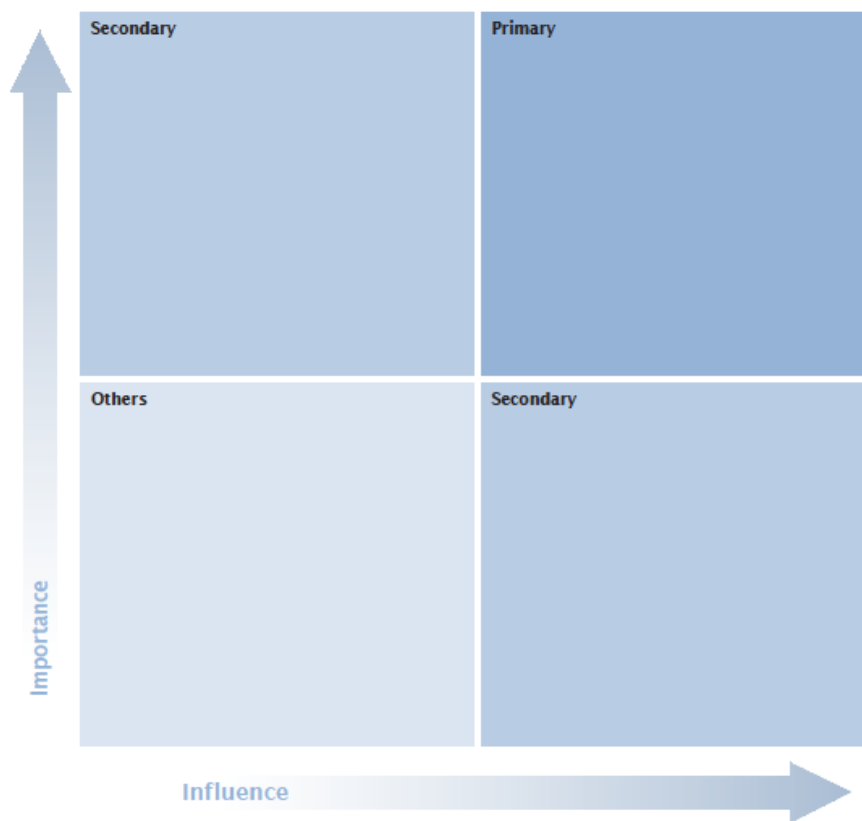
The next step is vital to your success. Now you need to identify the person who can decide regarding your issue, question or concerns for the Agency and the vendor. Identifying the right person(s) who can make a final decision is not always as obvious as it seems.

Too often, we make assumptions about who can make a final decision. Depending on the vendor, the contract point of contact may have some authority to say “yes” to you. But be careful about identifying the final decision maker; it is not always the person who signed the contract or is listed as the contract point of contact.

Complex, Long-Term and Strategic Relationships

For more complex or long-term relationships, the Contract Manager will want to identify all of the vendor’s employees who are influential. For strategic relationships, in addition to the vendor’s employees, the Contract Manager will also identify the Agency’s influential employees to include all the stakeholders in the governance structure. Below is the **CM 102 Stakeholder Matrix Tool**.

Stakeholder Matrix



To understand who to influence, place the stakeholders' names in the matrix above. Note the horizontal axis is influence. Influence means "how much influence does that stakeholder have to approve your request?" For example, the vendor's Subject Matter Expert will be very influential in the development of the statements of work, but not as influential on the legal terms.

Note the vertical axis is importance. How important is this stakeholder's agreement to approve your request? For example, the vendor's president may be only moderately important on a technical issue and refer you back to the vendor's Subject Matter Expert for issue resolution. Therefore, influencing the vendor's Subject Matter Expert regarding

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a technical issue will benefit the Agency more than influencing the vendor's president.

You now have a completed stakeholder analysis. You have the list of stakeholders, a general understanding of their business objectives and challenges, and their level of influence on a certain issue. It is time for you to persuade them to approve your request.

Make the Message Attractive To the Stakeholders

Influence is a critical "soft skill." It is the most effective and collaborative way to get people to change positions, attitudes and beliefs so that both of you can achieve the common goal of reaching a favorable agreement. This is especially true when working with stakeholders over whom you have no control. You cannot force a decision through; so, you'll have to persuade them to your way of thinking.

There are different aspects of influence; this manual will only focus on making the message attractive.



By making your message attractive, you have control over how you convey a message, even when your message is being re-conveyed to another stakeholder in your absence.

Rule 1 – Make the Information, Data, Proposal, Counteroffer, or Solution Attractive

The first rule of messaging is to make the information, data, proposal, counteroffer, or solution attractive to the stakeholder. It is simple enough, and rarely done. Your solution, request, or proposal should explicitly tell your stakeholder that you've heard them. You do this by asking open-ended questions (see chapter 12) and incorporating the information from the Stakeholder Analysis Tool into your updates, reports and one-on-one meetings.

Rule 2 – Make Complex Information Simple

The second rule of messaging is to make complex information simple. Do this even if you think that they **should** understand the complexity. Don't assume that they will understand. Present information in a way that allows the non-technical professional to be educated on the issue– not talked to condescendingly, but in a way to educate so that the non-technical professional can support a decision with facts and information, instead of just a gut feeling. For example, the vendor's president may not have the same depth of technical knowledge as you do, or the vendor's Subject Matter Expert (SME).

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Rule 3 – Actively Listen to Your Stakeholders

The third rule of messaging is actively listening to your stakeholders by asking clarifying questions. To know what will make a particular message attractive to the stakeholder you'll need a clear picture of their reality, impact, and any hidden needs or concerns you may not have identified in the Stakeholder Analysis. Clarifying questions are discussed below.

Rule 4 – Leverage Common Ground

The fourth rule of messaging is leveraging common ground. For example, you may have heard people start conversations with sentences like, *"You know Bob, we both believe in paying only fair prices. I know you don't like to pay too much at your company either."* The speaker is leveraging the shared interest of paying for and receiving a fair price. This kind of common ground is universal. Seek to find universal common ground among all stakeholders and use it as leverage.

Rule 5 – Craft a Message that Speaks to Both Final Decision Makers

The fifth and final rule of messaging is to use information to craft a message that speaks to both final decision makers' (state and vendor) specific needs. This means that understanding how your request meets the state's final decision maker's needs and the vendor's final decision maker's needs too. If you only understand how this request meets the State's stakeholders, you are only meeting the needs of one influencer. You need to also understand the vendor's stakeholders' needs and create a universal message to meet both parties' needs.

Clarifying Questions

Clarifying questions are open-ended questions that allow the speaker to talk at length about a need, concern or issue. These questions are expansive and help you mine for information in a gentle way to understand the stakeholder's reality when making requests.

Almost everyone responds well to clarifying questions. Part of their allure is that the questions themselves do not harbor a hidden agenda. The receiver can take the question at face value without worrying about being tricked.

Once you've asked the question, you need to listen carefully. Please don't say a word until you are sure that the person has completed their thought. Clarifying questions often evoke a paragraph response, so you need to be prepared to listen for several sentences suppressing any urge to interrupt.

Try these clarifying questions, or create your own.

- What is your greatest concern with . . . ?

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- What bothers you the most about that suggestion?
- What about . . . is important to you?
- Can you tell me more about . . .?
- What does . . . look like to you?
- How can we make our request fit your need to (spell out their need and/or concern)?
- What is the most/least important thing you need in this situation?
- How important is . . . to the overall picture?
- How do you see that we can accomplish . . .?
- If you were in my shoes, what would you recommend?
- What are the impacts of this (proposal, issue, suggestion) to the Agency, community the Agency serves or the vendor?

Will This Really Work?

Many people have questioned whether these suggestions will help them be more influential when negotiating with colleagues, leaders and vendors to drive vendor performance. In short, yes.

Influence is no longer a one-on-one conversation. Your message is conveyed in your absence internally within your organization and externally at the vendor's organization. Vendors are very uneasy, and can feel that Contract Professionals (negotiators and managers) are not properly conveying their concerns to Agency stakeholders in a meaningful way. Therefore, Contract Managers have a dual role—influencing internal and external stakeholders at the same time.

To be truly influential people must trust you. People within the Agency and people working for the vendor need to trust what you are saying.

“Trust exists when a person or organization has confidence in a positive result even when the issues and outcomes are out of their control, and there is risk of a potentially negative consequence. Partners also trust one another when neither side has reason to expect that it will be taken advantage of, and whenever possible, it will even do things that advance the other's interests.”⁸ Trust enables a productive Agency/vendor relationship by fostering a feeling of cooperation —cooperation within the Agency and between the Agency and the vendor.

⁸ Nyden, J, Vitasek, K. and Frydlinger. Getting to We: Negotiating Agreements for Highly Collaborative Agreements. Palgrave McMillan. NY. 2013. Page 25.

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Coaching Questions



1. Have you taken time to consider how your message comes across to your stakeholders?
 2. If not, what can you do to make your message attractive?
-



1. Have you completed a list of all of the stakeholders involved in your deal? How have you validated this information?
 2. Have you correctly identified the “yes” person? Summarize that person’s biggest concerns with your deal in five words.
-



1. How well do you really listen to your stakeholders? Or do you assume you know what is going on from past experiences with this person?
 2. What information can you gather? (Hint, look at the clarifying questions to help make your message attractive.)
-

Chapter 4 Developing Contract Requirements



It is important to align the business objectives, the technical specifications and the terms and conditions. Alignment means ensuring that the answers to the **CM 201 and CM 301 Requirements Checklist** (below) are included in the technical description of the goods and the outline of the services in the SOW. And all the risks associated with the vendor’s work need to be addressed in the contract. The contract then forms the framework to administer, monitor and manage the vendor’s performance.



Your key to success is to make sure that the vendor understands its role and responsibilities. It seems obvious, but all too often someone working for the vendor is uncertain of the vendor’s responsibilities. Since it is likely that the same person who documents the specifications will also monitor the contract, the Contract Manager can play a role in ensuring a better understanding of the requirements by analyzing the description of the goods and services for completeness.

CM 201 and CM 301 Connection Between Pre-Award Requirements and Post-Award Contract Management

According to the International Association for Contract and Commercial Management, 85 percent of respondents to one of its surveys indicated that raising the quality of requirements was the *No. 1* factor critical to improved contract performance.⁹ A common complaint from contract personnel is that “they were involved too late” by

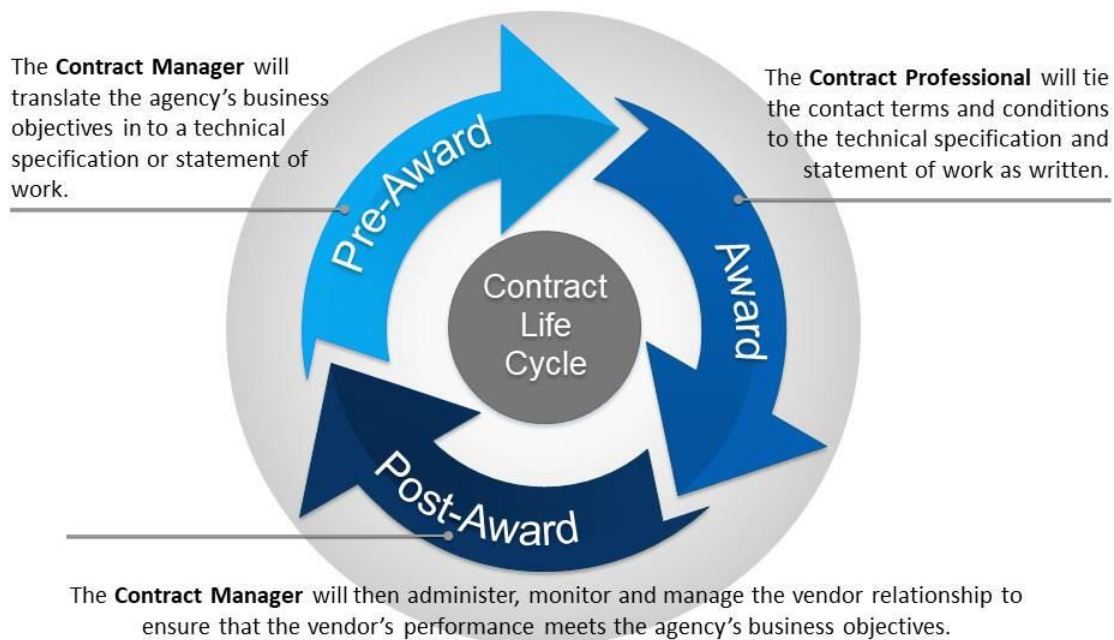
⁹ Contract and Commercial Management, The Operational Guide. IACCM: Van Haren, 2011. Page 104.

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others at the Agency. Meaning, others at the Agency did not feel that the contracting team needed to be engaged to help define and establish requirements.

Developing requirements is a collaborative process including Contract Managers, Contract Professionals, Subject Matter Experts, and of course the Agency personnel who will receive the goods and services. As the technical and functional specifications become more complex, Contract Personnel will work more closely to ensure that the vendor's work requirements are clear, complete and meeting Agency business objectives. Agencies don't always have the internal subject matter experts, and Agencies may need to bring to external subject matter experts to the process.

It is important for Contract Personnel to understand this flow: Business objectives drive the requirements, requirements drive the relationship type, which then drives the contract structure (elements and terms), which then drive the level of management.

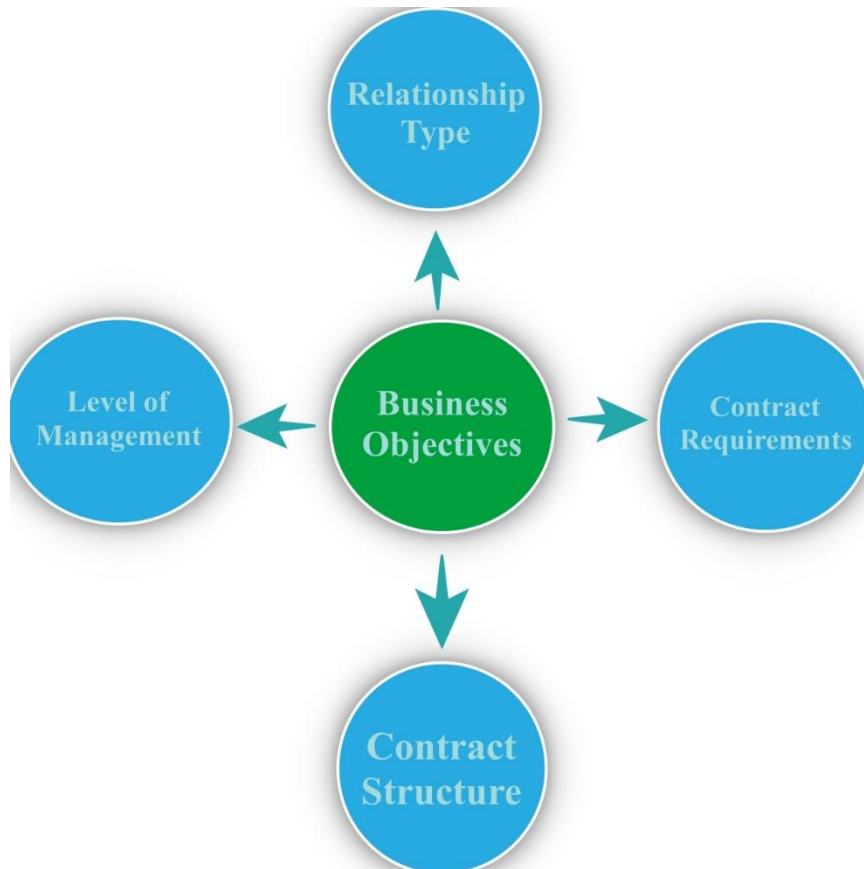


The Agency's concerns and problems become the larger business objectives the vendor will address. The Contract Manager will translate the Agency's business objectives into a technical specification or statement of work for the vendor to perform. The Contract

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Professional will tie the contract terms and conditions to the technical specification and statement of work as written. The Contract Manager will then administer, monitor and manage the vendor relationship to ensure that the vendor's performance meets the Agency's business objectives.

CM 201 and CM 301 Step #1 Outline the Business Objectives



Looking at the figure above, the business goals/objectives are the starting point for all aspects of the agreement, not the contract template type. Let's reiterate that point: Contract Professionals choose the template based on the business goals; they do not fit the business goals to match the contract template.

It is critical that the people who write the contract requirements understand the business objectives for the vendor relationship. Once objectives are understood, the Contract Manager will then outline the contract requirements so that the Contract Professional can choose the right contract template.

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What are the business objectives for the vendor relationship? What will the vendor do to meet that objective? How will you (Contract Manager) make sure that the vendor is meeting that need? These are questions that will be answered in the technical description of the goods or services the Agency is purchasing.

The Agency's needs, or business objectives, can be stated as goals such as:

- Saving money, meeting a schedule, performing a service, customer/community satisfaction, etc.
- Meeting internal challenges to the Agency's goals of saving money, meeting schedule deadline, satisfying community needs, etc.
- Meeting external challenges to the Agency's goals of saving money, meeting schedule deadline, satisfying community needs, etc.
- Meeting a critical level of need of one of the Agency's communities.

Now that the need or problem is defined as a business objective, it is time to define the technical or functional requirements.

CM 201 and CM 301 Step #2 Understand and Document the Functional and Technical Specifications

This section emphasizes your role to align the description of the goods and services to the business objectives and to define description of the goods and services. Some common ways to document specifications are:

- Description of the goods – technical and functional specifications.
- SOW – A Statement of Work (SOW).

Use the **CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Good** and/or the **CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service**.

Acceptance (What happens if the goods/services don't meet expectations)

The contract template will have generic acceptance language, and usually refers to the scope of work or technical specifications for acceptance criteria. Contract Professionals should ensure acceptance aligns with the scope of work and technical specifications. This section of the CM 201 checklist will provide the Agency and the vendor acceptance criteria (Acceptance criteria provide guidance about how and when the work is complete. Complete can mean a part of the units are delivered or all the units must be

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delivered at one time. Please see the Defined Terms in the contract for the applicable definition.)



CM 201 Stop Here and Move to Step 3

CM 301 Mapping Out a “Hybrid” Scope of Work

A hybrid statement of work includes the purchase of physical items and services associated with the item purchased into one document. The same vendor will provide the good and the service. For example, the purchase of an electrical generator, operation, maintenance and repairs of that electrical generator is a hybrid scope of work. The purchase of computer equipment and custom designed software code is also a hybrid scope of work.

Often contract templates cover one type of purchase. Combining two different types of purchase (goods and services) will require some additional work on the contract requirements and contract templates to get the contract provisions to work efficiently. In those instances, the Contract Manager and Contract Professional should start with the work that addresses the major purpose of the acquisition and then integrate additional provisions for the secondary acquisition into the final contract. This is true for the requirements and contract terms and conditions. The **CM 301 Requirements Checklist: Hybrid Contracts** will help that collaborative process.

Acceptance (What happens if the goods/services don’t meet expectations)

The contract template will have generic acceptance language, and usually refers to the scope of work or technical specifications for acceptance criteria. This section will provide the Agency and the vendor acceptance criteria. Acceptance criteria provide guidance about how and when the work is complete. Contract Professionals should ensure acceptance aligns with the transaction. Complete can mean a part of the service is complete or all the services are complete. (Please see the Defined Terms in the contract for the applicable definitions.)



CM 301 Stop Here and Move to Step 3

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CM 401 Developing Requirements for Highly Strategic Work



The completed and approved CM 401 Strategic Relationship Requirements document will eventually become the Scorecard



Use the same criteria to justify the purchase of the service(s) to measure the success of the service(s).

A highly strategic relationship is one that serves a strategic purpose to further the Agency's mission. These relationships are often long-term, requiring a close working relationship between the Agency, vendor and others, such as subject matter experts. Additionally, vendors bring a significant level of capabilities to the relationship that the Agency would not otherwise have using its own personnel. One downside is that the Agency can become too dependent on one vendor.

According to the International Association for Contract and Commercial Management, 85 percent of respondents to one of its surveys indicated that raising the quality of requirements was the top factor critical to improved contract performance.¹⁰ A common complaint from contract professionals is that "they were involved too late" by Agency peers. Meaning Agency peers did not feel that the contracting team needed to be engaged to help define and establish requirements.

Developing requirements is a collaborative process including Contract Managers, Contract Professionals, Subject Matter Experts, and of course the Agency personnel who will receive the goods and services. As the technical and functional specifications become more complex, Contract Personnel will work more closely to ensure that the vendor's work requirements are clear, complete and meeting Agency business objectives.

Agencies don't always have the subject matter experts, and Agencies may need to bring to external subject matter experts to the process.

The Contract Professional's role in developing statements of work in highly strategic contracts will be that of facilitator of many stakeholder's needs, concerns and objectives. At this point in the process, the Contract Manager will be both a stakeholder and collaborator. But, the Contract Professional will draft the contract terms and

¹⁰ [Contract and Commercial Management, The Operational Guide](#). IACCM: Van Haren, 2011. Page 104.

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conditions and should be involved at the earliest stages of the requirements development. This is because highly strategic relationships suffer from:

- Incomplete or unclear requirements confusing the Agency and the vendor;
- Requirements dominated by one stakeholder to the detriment of other stakeholders' needs and concerns;
- Flawed requirements due to an unclear understanding of what the market can offer to solve the problem;
- Unclear or incomplete understanding of regulations or policies impacting the work; and
- A tendency to rush to a solicitation without a clear enough understanding of the underlying need the solution will fix.

This section will aid the Contract Professional in working with the Contract Manager and multiple other Agency stakeholders in developing a healthy, robust and highly effective strategic outcome.

In more strategic relationships, several stakeholders will collaboratively define the business objectives, the desired outcomes, some functional requirements and associated metrics for the vendor agreement. This may include subject matter experts outside of the organization. *If you are reading this manual, your function as a Contract Professional will be to align the stakeholder's views, wants and needs into a coherent contract to ensure the vendor relationship will meet the Agency's outcomes.*

A word of caution: Some organizations find it hard to identify and develop business outcomes for all but the most financially significant and/or high-risk vendor relationships. This is especially true for organizations that see vendor relationships as transactions rather than critical partners to deliver business outcomes.

Because highly strategic relationships further the Agency mission, the starting point is to document the Agency's outcomes for this highly complex work. The outcomes are directly tied to the Agency's business objectives. In other words, what does the Agency hope to accomplish with this business relationship? Translate these accomplishments into outcomes for the Agency, and then into performance objectives the vendor will provide through its work.

The **CM 102 Stakeholder Analysis** tool from the previous chapter will help the Contract Professional take a seat at the table to facilitate any conversations you need to have with your stakeholders about the topics identified in this section.

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Use the **CM 401 Strategic Relationship Requirements** tool to help you in this process. The document will aid all the stakeholders in developing the statement of work and performance metrics. *The spreadsheet is a high level internal working document only.* This completed document—in an ideal setting— would be approved by all stakeholders before designing the scope of work.

CM 401 Strategic Relationship Requirements Spreadsheet

To begin to think in terms of business outcomes, consider the Agency’s business objectives and those objectives’ connection to the strategy for the relationship (note—not for the specific vendor).

	A	B	C	D	E	F	G	H	I	J	K
2	Business Outcome	Key Performance Indicator	Performance			Liquidated Damages	Validation				
3			Performance Standard	Tolerance +/-	Who Collects		Data Source	Calculation	How Often Collected		
4	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9		
5											
6											
7											
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21											

CM 401 Strategic Relationship Req.

Business Objectives

- Get a copy of the business case, budget analysis, spreadsheet with projected savings etc. or anything that the stakeholders are using to fund, direct or internally discuss this project.
- Or develop a business objective questionnaire based on the **CM 102 Stakeholder Analysis** tool, the **CM 301 Requirements Checklist for a Hybrid Purchase**, and your own questions. Send this around for review and discussion. (Be prepared for stakeholders to have different needs, wants, or requirements.)
- Ask stakeholders to tell you about at least *two improvements* they want from the relationship that seem obvious to them but need to be communicated to the vendor. (These answers will validate that the technical and functional requirements are complete.)

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- ❑ Ask stakeholders to identify at least *two potential benefits* for bringing in a vendor beyond those already communicated to you. (These answers will identify service metrics or Service Level Agreements.)

With this information, identify 3-5 outcomes for the **CM 401 Strategic Relationship Requirements** spreadsheet. Outcomes could look like these:

- Operate a financial system that effectively and efficiently manages XYZ spend.
- Optimize the division of services, (between Agencies, between vendors within an Agency, between an Agency and the federal government) leveraging collective capabilities to deliver ABC service to the community.
- Minimize environmental impact of JKL on the community.

Once the Agency identifies the three to five outcomes, place them in the left most column (Business Outcome). The next step will be to identify the associated and necessary performance from the vendor. Note that this is different from the traditional way of developing scopes of work. Normally, business people think of the work requirements and then the performance requirements. *In an outcome-based setting, the outcomes lead to performance and then to the work requirements.*

Performance Objectives

Identify the Key Performance Indicators (KPIs) that will demonstrate the vendor's performance against the Agency's outcomes.

- ❑ Ask stakeholders to tell you what *their supervisors* need to know about the progress of the project. For example, if the objective is:
 - Operate a financial system that effectively and efficiently manages XYZ spend, *then the KPI could be actual spend versus budgeted/estimated spend.*
 - Optimize the division of services, (between Agencies, between vendors within an Agency, between an Agency and the federal government) leveraging collective capabilities to deliver ABC service to the community, *then the KPI could be a reduction of the number of service disruptions as consumers move from one Agency's services to another.*
 - Minimize environmental impact of JKL on the community, *then the KPI could be a reduction in the carbon emissions of Agency owned equipment performing a service within the Agency.*

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At this point, it is important to stay high level to ensure that all stakeholders and their supervisors' needs are met. Place the KPI in the column to the right of the Business Objective Column.

- Identify any industry-wide performance standards (Service Level Agreements—SLAs) associated with the KPI. This standard will help benchmark vendors' proposals and their performance in these highly strategic arrangements. Place any industry-wide standard in the column titled Performance Standard. (99 percent uptime, 20 percent reduction in emissions etc.)
- If there are no known published standards, the stakeholders will create their own performance standard. That performance standard will be placed in the column.

Tolerance

- Identify any allowable tolerance for the performance standard. In other words, if the vendor meets the goal of meeting 90 percent of a 20 percent emissions target is that on, meeting, or below target? Use a percentage, or other numeric value. Place the numeric value in the column for tolerance.

Liquidated Damages

- Identify any liquidated damages associated with a missed target. In other words, if the target is to reduce emissions by 20 percent and the vendor only reduces emissions by 70 percent of the 20 percent, should the vendor pay an amount in pre-determined liquidated damages? Place any liquidated damages in the middle column.

Data

Next identify who will collect the data to support the metric, how the data will be collected and how often. Ask the stakeholders, a technical representative and the Contract Manager the following questions:

- Ask stakeholders to identify any *reporting requirements* they will need to demonstrate performance to their supervisors. Is it clear to them and to you who will be collecting the data? Is it clear that the party receiving the data will trust the data? Will the data be in a form that is comprehensible to the receiving party?
- Then specifically determine:
 - Which organization will collect the data associated with the metric?
 - What data is needed to validate the metric?
 - How will the metric and associated tolerance be calculated?

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- How often does the collecting organization need to collect the data?

Place the answers to these questions into the various columns from the middle to the right. Then finally,

- ❑ Ask the stakeholders about the recommended issue resolution process if the parties do not agree on the contents of the data, especially if that data could lead to a claim of liquidated damages.
- ❑ Ask stakeholders to identify the risks associated with the work from their point of view, such as things like disruption of services to a vulnerable community, or the delay of another time critical project, or the Agency being out of compliance with a federal regulation or law. The Contract Manager and technical representative will identify risks as well, but it is essential to understand the stakeholders' perception of risk before the solicitation for proposal is issued.



This completed and approved CM 401 Strategic Relationship Requirements document will eventually become the Scorecard.

Note: If the stakeholders do not have the answers to the questions about performance, consider issuing a Request for Information (RFI) to solicit answers from the vendor community.

Statement of Work

Now that the outcomes, performance and collection of data are identified, the Contract Manager, the technical representatives and the Contract Professional can collaboratively outline the work the vendor must perform to meet the performance requirements. For this portion of the work, the Contract Manager will likely use the **CM 301 Checklist for Success for a Hybrid Purchase** will probably purchase several services from the vendor to achieve a holistic outcome. Rather than thinking about goods and a service, think about a primary service and a secondary service when answering the questions in the checklist.

CM 201, CM 301, and CM 401 Step #3 Refining The Requirements Using Performance Measures (Metrics, SLAs and KPIs)

Metrics, Service Level Agreements (SLAs) and Key Performance Indicators (KPIs) are agreed upon performance measures—what gets measured gets done. Contract

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Managers will want to incorporate and monitor the vendor's performance in the form of metrics, SLAs or KPIs.

Defining Performance Standards

- A **metric** is an objective unit of measurement for some form of performance that the Organization is seeking. On-time delivery of any good or item is a metric. The Organization can document the expected delivery date and verify that the good or service arrived on, before, or after that delivery date. Simpler contracts will have metrics.
- A **Service Level Agreement (SLA)** is a level of agreed performance for a service or on a repeated purchase of goods. For example, if the metric is on-time delivery, the SLA would be an on-time delivery rate of 95 percent. *Meaning, the vendor will promise to deliver the goods on the delivery date 95 percent of the time, or the service will operate (uptime) 95 percent of the time.* Contracts requiring repeated delivery of a service or good will have some form of SLA. (Note we are not talking about software maintenance agreements that are sometimes also called service level agreements.)
- A **KPI** is either a metric or SLA that is critical to the Agency to track to determine the overall performance of a high value or high-risk contract. On-time delivery can be a KPI for a vendor that delivers mission critical services to the community the Agency is serving. Highly complex, high value and/or high-risk contracts should consider tracking three to five KPIs on a quarterly basis.

When chosen, implemented and monitored performance measures can help determine/establish:

- precise delivery standards, such as quality, responsiveness, and/or efficiency;
- an objective means for determining if ongoing performance meets expectations;
- an objective basis for triggering damages based on poor performance;
- valuable trends and operational data that enables the Agency to identify and correct problems; and
- a foundation for making informed adjustments in service delivery to meet changing business requirements in the next cycle of bidding for the work.

Metrics

Performance measures answers questions such as: when, by whom, and to what standard is the work to be done. They are fixed, objective measurements. Failure to meet the performance measure would result in a consequence, ranging from an informal communication to the vendor all the way to a formal termination of the contract.

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Looking back on the **CM 201 Requirements Checklist** from above, clarify the following into unit of measurement, if you can.

- What other objective factors will the Agency use to verify the work?
 - Goods: think of things like define complete delivery, partial delivery, “defective goods,” etc.
 - Services: think of things like number of visits, number of people served, software functions for a time period without failing, reports delivered, etc.

List the unit of measurement here: _____ . If there is no unit of measurement, complete the internal documents to provide to the Contract Professional for review.

If there is a unit of measurement, answer these questions:

- Who will record the data about this unit of measurement?
- How often will the recording party collect the data?
- In what form will the recording party report the data?
- How will the receiving party validate that the data is accurate?
- Who will review the data?
- Who at the Agency will approve the data?



CM 201: Complete the internal documents for the solicitation and provide them to the Contract Professional for review.



CM 201 Chapter Ends Here

CM 301 and CM 401 Service Level Agreements

SLA requests from stakeholders often have a “letter to Santa” quality about them. In setting high standards, the stakeholders are oblivious to the cost of that high standard.

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They believe that the SLA activities are so important that they must be tracked and if the vendor misses the service level, levy Liquidated Damages. Some functions actually need very high standards, but not very many, *and quality often costs money.*

At this stage of the requirements development, the Contract Personnel may need to negotiate with stakeholders to determine which SLAs are necessary and to uncover any additional costs associated with the SLAs. For example, a 95 percent on-time delivery SLA might provide adequate timely delivery to an Agency. The vendor could provide a 99 percent on-time delivery SLA, but at an additional cost to the Agency. The Contract Professionals would help the stakeholder balance the need for on-time delivery with additional costs for near perfect on-time delivery.

To better discuss performance measures with stakeholders, understand why performance measures don't always guarantee performance.

Why SLAs Don't Always Guarantee Performance

There is an interesting phenomenon called "green scores and red faces." This means that the vendor is performing according the SLA or KPI, but the end user is still unsatisfied with the service. Returning to on-time delivery the vendor could deliver incomplete shipments 99 percent of the time. The vendor is technically meeting the on-time SLA, but missing the intent by delivering partial shipments to meet the on-time delivery SLA.

Why is the "green score and red face" so prevalent? There are many reasons.

First, Agencies set the wrong metric (unit of measurement). For example, template contracts:

- Use what is already written in the template, but that metric, SLA or KPI is not needed for this vendor relationship;
- The metric, SLA or KPI is what someone used in a similar situation, but it does not apply here;
- The metric is what someone thinks is a good idea (but neither the Agency or the vendor can collect the right data to support the performance measure);
- The Agency or the vendor collect the wrong data, or insufficient data to support the metric, SLA or KPI;
- The Agency uses the metric for the wrong purpose, i.e. it is not tied to a business objective outlined in stakeholder analysis or business objectives in the requirements checklist; or
- There is insufficient definition describing the metric, SLA or KPI, and that causes confusion.

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Second, Agencies set the wrong target. Let's look at a commercial example. In a call center setting, a target might be eight calls per representative per hour. But this target could drive the wrong behavior—cutting calls off before the problem is solved decreasing customer satisfaction. The Contract Manager needs to understand the impact of the target on the rest of the business objectives.

Returning to on-time delivery, seek to understand the downside of a 99 percent delivery rate.

- Will a 99 percent on-time delivery rate cause the vendor to short ship?
- Will it cost a premium to get to a 99 percent on-time delivery rate?
- Does it make sense to have a 9 percent complete shipment requirement with the 99 percent delivery rate?
 - If so, what would that cost the Agency?
 - If so, what are the benefits to any increase in cost?

Best Practices for Developing SLAs

Start from the business objective: To have a valuable SLA, it must contribute directly to the Agency's desired business objectives.

Return to the **CM 301 Requirements Checklist for Hybrid Purchase or the CM 401 Strategic Relationship Requirements** from above, tie the following three points into a SLA, if you can.

- What outcome is the Agency looking for from this vendor?
 - Deliver _____ to _____ on time for proper maintenance of _____.
 - Provide a stable "app" that allows _____ to more easily _____ when scheduling appointments with _____.
 - Provide a platform to easily track _____, which will allow the Agency to better track _____ for federal grant reporting.
- What other objective factors will the Agency use to verify the work performs according to plan?
 - Goods: think of things like define complete delivery, partial delivery, "defective goods," etc.
 - Services: think of things like, number of visits, number of people served, software functions for a time period without failing, reports delivered, etc.
- What are the suggested industry SLAs? Will an industry SLA work for this agreement? Why or why not?

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List the SLA here: _____.

List the target here: _____.

Then answer these questions:

- Who will record the data about this SLA?
- How often will the recording party collect the data?
- In what form will the recording party report the data?
- How will the receiving party validate that the data is accurate?
- Who will review the data?
- Who at the Agency will approve the data?
- What happens if the vendor misses the target?
 - The first time?
 - At a critical time in the service?
 - At the beginning of the contract implementation?
 - More than once? In what time frame? (Twice in a year or twice in a month?)

A Tip for Working with the Contract Professional

After you have answers to the **CM 301 Requirements Checklist for a Hybrid Contract**, ask the Contract Professional to look at any potential contract template or proposed contract language (for a “good” purchase and a “service” purchase) to identify any provisions that are:

- Missing,
- Conflicting, and/or
- Need to be modified.

Then revisit the scope of work and technical specifications to address any issues that the proposed language needs to address that were not originally addressed in the first draft of the contract provisions. This interactive process may require several drafts before issuing a solicitation.



Stop here. Complete the internal documents for the solicitation and provide them to the Contract Professional to continue the collaborative process of developing the contract. This process may require several drafts before issuing a solicitation.



CM 301 Chapter Ends Here

CM 401 Creating a Scorecard

A contract scorecard is one approach for both parties to measure the overall performance of a contract. The Scorecard tracks metrics, including Service Level Agreements and Key Performance Indicators.

Ideally, Scorecards track KPIs, those critical few (3-5) metrics that reflect the vendor's performance against the Agency's business outcomes. For truly strategic relationships, it is worth your time as the Contract Professional to work in collaboration with the Contract Manager and relevant stakeholders to develop a customized Scorecard or customize an existing Scorecard with the information from the **CM 401 Strategic Relationship Requirements**.

KPIs

The Agency can certainly consider using the **CM 401 Strategic Relationship Requirements** as a Scorecard. In that situation, the Agency and vendor would agree to those two or three performance measures as outlined in the document. As a note, the Contract Manager should consider developing a high-level definition overview as a way of outlining the underlying assumptions associated with the document's creation. This is especially helpful if there is any indication that an Agency team member might enter the Contract Management function after contract execution.

In more complex delivery scenarios, the Agency might consider adding some end-to-end process measures and some operational metrics to the Scorecard.

Process Measures

A process measure tracks the end-to-end results of an entire process. Repeated deliveries from the same vendor over a timeframe may include a measurement to monitor the process. For example, an Agency may choose to track each step of the process of fulfilling a purchase request, such as:

- Time to receive the purchase order,
- Pick and pack the items,
- Shipment date, and

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- On-time delivery date.

Note that the Agency would track each step, not just the last metric—the on-time delivery date.

Please note that the vendor would have to be in full control of the entire process to measure a process effectively. If the Agency were to require a vendor to perform a complete, identifiable, repeatable process, consider including a process measurement in the Scorecard. Include the process measure in the **CM 401 Strategic Relationship Requirements** and associate it with a business outcome (in addition to a KPI). Follow the same process as if it were a KPI.

Operational Metrics

An operational metric measures a result at the task level. Meaning, the Agency would look at a specific and defined task and measure the performance of that task.

- What is the task being measured?
- Why is this task being measured?
- What is the purpose for measuring this task?
- Who will measure the task?
- What is the impact of not meeting the task's objectives?

Some tasks are worth measuring. For example, an Agency might choose to audit the financial records of vendors receiving Federal funds. The audit results are a metric, and as a metric it would provide valuable information about the ability of the vendor to use Federal funds to help an Agency support its mission for the benefit of the community. Annual audits as part of a larger strategic relationship and long-term contract might be worth the time it would take to track the results year over year. The Agency could track audits performed in a time frame (each year), or audits identifying theft or fraud, or any other unit of measurement that meets the Agency's outcome. If the Agency wanted to include the operational measure in the **CM 401 Strategic Relationship Requirements**, associate it with a business outcome (in addition to a KPI, or to further define a KPI). Follow the same process as if it were a KPI.

Coaching Questions



1. **What gaps have you identified from reviewing the Requirements Checklist?**
 2. **Who can you ask to get the answers?**
-

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1. Does the Organization have business objectives for this contract? If not, who can you ask to get that information?
 2. What gaps have you identified from reviewing the Requirements Checklist?
 3. Do you have a clear understanding of the SLAs that the organization needs, and why they are included in the contract?
-



1. Do you have a clear understanding of the strategy for this strategic relationship, and how it will meet larger business goals?
 2. Have all the stakeholders seen, reviewed and agreed to the Strategic Relationship Requirements Document? How will you reach out to any stakeholders who have not been involved to date?
 3. Are the performance requirements clearly outlined in a way that the vendor, when bidding on the work, can easily determine how they can meet that requirement?
-

Chapter 5 Identifying, Analyzing and Documenting Risk

CM 201, CM 301 and CM 401 Introduction

All vendor relationships with Agencies have some risk. It is the Contract Manager's responsibility to identify, analyze, document and monitor risk. This chapter will provide guidance on identifying, analyzing and documenting risk. Chapter 7 will provide guidance on managing contracts, which includes managing risk.

Agency leaders are the owners of the business decisions with respect to vendor contracts. This ownership extends to risk decisions as well. Agency leaders should be comfortable with the risk profile identified in the process outlined in this chapter as it relates to each contract you monitor. Typically, Agency leaders have the delegated authority to decide how much risk to accept in any given vendor relationship.

Do you know who at your Agency has executive responsibility for the contract(s) you manage? If not, please make a note to understand that chain of command before completing the **CM 301 Risk Monitoring Template**.

If you are reading this manual, it is likely your responsibility to identify, analyze, document and manage risk. It is your responsibility to ensure these things are done before you move forward in the contracting life cycle.



If after reading this chapter and you determine it is not your responsibility to identify, analyze and document risk, you need to know who in your Agency will identify, analyze and document risk. Your task shifts to ensuring that the risk assessment is done before the contract requirements are completed and sent to the Contract Professional for review.

The risk analysis will directly lead to a risk-monitoring plan that you will develop in Chapter 7 as part of the contract management plan.

CM 201, CM 301 and CM 401 Definition of Risk

State Administrative & Accounting Manual [SAAM]

SAAM provides significant guidance on identifying, assessing, monitoring risk that is insightful for Contract Managers in identifying, assessing and monitoring contract risk. *The State of Washington expects contract managers to be familiar with and apply the concepts of risk to contract management.*

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[SAAM 20.22.10 Risk assessment overview] Risk is defined as the possibility that an event will occur and adversely affect the achievement of objectives. Therefore, a precondition to risk assessment is establishing objectives. Risk assessment involves a dynamic and iterative process for identifying risks to achieving Agency objectives, analyzing the risks, and using that information to decide how to respond to risks.

In risk assessment, management considers the mix of potential events relevant to the Agency and its activities in the context of the Agency's public visibility, size, operational complexity, regulatory restraints, and other factors. Because of these variables, the same activity could have very different levels of risk for two different agencies.

Contract risk—The probability of loss to the vendor from a buyer terminating a valid contract, and/or the probability of loss to either party from failure in contract performance.

Legal Risk –The risk of loss to an institution, which is primarily caused by:

- (1) A party's failure to comply with statutory or regulatory obligations;
- (2) A defective transaction;
- (3) A claim (including a defense to a claim or a counterclaim) being made or some other event occurring which results in a liability for the institution or other loss (for example, as a result of the termination of a contract);
- (4) Failing to take appropriate measures to protect assets (for example, intellectual property) owned by the institution; or
- (5) Change in law.¹¹

Risk— the possibility that an event will occur and adversely affect the achievement of objectives.

Risk event—the occurrence of a risk and associated loss.

“Commercial contractual risk management involves the calculated actions to reduce the severity, frequency, and unpredictability of damages, losses and claims.”¹²Calculated

¹¹ See: ([Legal Risk in the Financial Markets](#)). Roger McCormick. "Legal Risk in the Financial Markets", Oxford University Press

¹² [Managing Contractual Risk Issues In Commercial Contracts Management](#)

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actions include strategic (systematic and ongoing plans and associated contract language) and operational (plans and contract language for this transaction).

CM 201, CM 301 and CM 401 Risk Management in the Contract Life Cycle

Risk is best addressed when properly identified, analyzed and documented in the pre-award phase. If the risk is not identified until the post-award phase, it may be more difficult to manage the possibility of loss.

In general, the Contract Manager should:

1. Consider if it is possible to avoid the contractual risks completely, or
2. Accept a probability of the risk's occurrence and then plan actions, which would mitigate or control the risk's potential impact in the delivery of goods or services and as outlined in the contract language.

The Contract Manager and Agency stakeholders should work together to identify, assess and plan to mitigate or control contract risk at the *pre-award phase*. This means at the time contract requirements are in development. Contract requirements are things like the statement of work, delivery dates, project milestones; they ensure that the Agency can deliver its obligations on time and that the vendor understands what it has to deliver and by when.



Once the Agency is comfortable with the risk evaluations, the activities move to soliciting, and negotiating with the vendor (within the legal parameters of the competitive solicitation laws). The Contract Professional takes over at the *award phase* to include language in the contract that mitigates the risk, allocates the risk to the vendor, or accepts the risk on behalf of the Agency. Contract language, as you will soon see, goes far beyond **Indemnification** and **Limitation of Liability Clauses**.

Once the contract is executed, the *post-award phase* begins as the Contract Manager implement plans to manage the risk to prevent loss to the Agency.

CM 201 Risk Identification

In most instances, the Contract Manager will identify risk and possibility of loss in the vendor relationship by completing the **CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Good** or **CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service**. Therefore, the Contract Manager will use the checklist to identify the risk and the completed checklist will help the Contract Professional choose the right contract template to address the risk. Typically, template contracts address common risks associated with the purchased good or service, and those templates will not need to be modified to address common

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risks. Then the Contract Manager will monitor and manage the risk using contract management principles outlined in Chapter 7.



If you have questions about risk after completing the Requirements Checklist, set up a time to talk to your Contract Professional or a Subject Matter Expert.

CM 301 and CM 401 Risk B: Reducing and Controlling Risk

CM 301 and CM 401 Risk Categories

Risk takes many forms from natural disasters, to those created by people making mistakes, to deliberate actions, such as fraud.

Three Broad Categories of Risk

1. Legal risks, such as incompliance with the Public Records Act,
2. Liability risks, such as breach of contract, claims, warranty problems, termination, IP infringement charges, breach of confidentiality (disclosure)¹³, disputes and litigation, and
3. Business risks are risks that threaten the Agency's ability to deliver its business objectives.



At all times please follow your Agency's policies, chain of decision making command, and all applicable laws when assessing risk and making decisions which could lead your Agency to accept risk. If you have questions, please talk to your Contract Professional and follow your Agency's process to engage legal staff. This manual and training sessions do not broaden any delegated authority that you currently have.

This manual and the training sessions will focus on paying special attention to the pre-award phase of identifying and documenting risks in the contract requirements. Once the risks are understood, the Contract Manager and Contract Professional will include contractual terms and conditions to further document identified risks. The appropriate contract language will help the Contract Manager enforce requirements to reduce the possibility of loss

¹³ Follow your Agency's policies and See RCW 42.56 for further guidance.

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associated with a risk. Please follow Agency policy and procedures when monitoring and mitigating risks.

With mandated performance-based contracting, the Contract Manager will focus on risks associated with non-performance. Non-performance typically happens when people make mistakes that could have been avoided in a clearly written Statement of Work.

When vendors have an incomplete picture about what is required of them, they can inadvertently fail to perform. Non-performance increases the possibility of loss. The loss can come in many forms such as; overpayment to the vendor, missed deadline and improper use of Federal grant funds. Understanding performance risks reduces the risk of loss.

CM 301 and CM 401 Four Ways to Address Risk in a Contract

There are four ways to address risk in a contract, and each should be identified before issuing a solicitation.

- 1. Allocate risk and payment for loss: Limitation of Liability, Indemnification, Waiver of Subrogation, etc.**
- 2. Mitigating the impact of risk and loss: Statement of Work, performance standards, testing, approvals, acceptance criteria, etc.**
- 3. Control the impact risk and loss: Insurance policies, following laws, regulations and policies, etc.**
- 4. Accept the risk: The Agency will perform some of the work with Agency personnel rather than allow the vendor to perform the work.**



Never accept contract risk without first getting Agency leadership approval.

CM 301 and CM 401 Risk Management Goals: Minimizing, Monitoring and Controlling Risk



From the Agency's point of view, Contract Managers should minimize, monitor and control known risks and associated losses arising from the delivery of vendor's goods or services.

Minimizing Risk

Minimize or mitigate risk means finding ways to reduce the impact or loss of a risk.

Monitoring Financial Risk

Monitoring risk means tracking and evaluating both the Agency's actions and vendor's actions, tasks, procedures, and deliveries to ensure that a risk event does not happen at all, or if a risk event happens, the event is controlled to reduce its impact.

[SAAM 20.28.10 Monitoring overview] Monitoring is the process of evaluating the quality of internal control performance over time and promptly addressing internal control deficiencies. Monitoring can take the form of ongoing evaluations, which are built into business processes at different levels of the Agency, or separate evaluations, which are conducted periodically and vary in scope and frequency, depending on assessment of risks, effectiveness of ongoing evaluations, and other management considerations.

Monitoring of the internal control system is essential in helping internal control remain aligned with changing objectives, environment, laws, resources, and risks.

What this means to you is the CM Risk Monitoring Template is one tool of many “of evaluating the quality of internal control performance over time and promptly addressing internal control deficiencies.”

Controlling Risk

Controlling the risk means performing activities, following procedures or using techniques to help ensure that the risk and associated loss does not happen.

[SAAM 20.24.10 Control activities overview] *Control activities are policies, procedures, techniques, and mechanisms that help ensure that risks to the achievement of an Agency's objectives are mitigated.* Control activities are performed at all levels of the Agency, at various stages within business processes, and over the technology environment. They may be preventive or detective in nature. Preventive controls are designed to deter the occurrence of an undesirable event by implementing procedures to avoid them. Detective controls are designed

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to identify undesirable events that do occur and alert management about what has happened.

When designing and implementing control activities, management should consider cost versus benefit and the likelihood and impact of the associated risk. *Building control activities into business processes and systems as they are being designed is generally more cost-effective than adding them later (i.e. when the contract requirements are developed and included in the solicitation).*

What this section means to you.

Please check with your Agency leadership for the policies associated with minimizing, monitoring and controlling risk. Also, make sure that Contract Professionals build the control activities into the Statement of Work, terms and conditions before the solicitation is sent out for bids.

CM 301 and CM 401 Principles Relating to Risk Identification and Assessment

A note on terms: SAAM uses the term “management,” and in this context, it means the Contract Manager.

Relying on the SAAM for guidance to identify and assess risk, two of the four principles are relevant to Contract Management.

[SAAM 20.22.30] 6. Management specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to its objectives.

Management specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to its objectives. The following points of focus highlight important characteristics relating to this principle.

[...]

- Considers risk tolerance – Management considers risk tolerances for the defined objectives. Risk tolerance is the acceptable level of variation in performance relative to the achievement of objectives.

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What this section means to you.

The Contract Manager will use clear business objectives to identify potential risks and associated losses. **The CM 201 and CM 301 Requirements Checklists** are a good starting point for identifying risks since the first part of the checklist asks the Contract Manager to identify the business objective(s) for the relationship. While further defining the work and performance measures, the Contract Manager will consider the Agency's tolerance for the risk and choose one of the four ways to address risk (allocate, control, mitigate or accept).

[SAAM 20.22.40] **7. Management identifies and analyzes risks to the achievement of its objectives and uses that as a basis for determining how the risks should be managed.**

Management identifies and analyzes risks to the achievement of its objectives and uses that as a basis for determining how the risks should be managed.

[...]

- Analyzes risks – Management analyzes identified risks to estimate their significance, which provides *a basis* for responding to the risks. Management estimates the significance of a risk by considering the magnitude of impact and likelihood of occurrence. [...]

What this section means to you.

Analyzing risk means estimating both the probability of and the severity of the risk event. It is a two-step process. In other words, the risk event might have a low probability of happening, but if it does happen, it could create a severe impact and loss. The analysis then provides the Contract Manager with input on how to best monitor the risk. The contract management plan will include the risk analysis and monitoring plan.

[SAAM 20.22.40] **7. Management identifies and analyzes risks to the achievement of its objectives and uses that as a basis for determining how the risks should be managed.**

[...]

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- Manages risk—Management considers how the risk should be managed. Management designs overall risk responses based on the significance of the risk and defined risk tolerance.

[...]

What this section means to you.

It is up to the Contract Manager, the Contract Professional and Agency leadership to determine how to best address identified risk. With commonly identified Agency/vendor risks, the contract template will likely adequately address the risk.

It is worth noting here, that one person may not have the authority to determine how to address an uncommon risk. It is likely that several people at the Agency will discuss and determine how to address risks that are not common to Agency/vendor relationships. The Contract Professional will include language to address the risk and the Contract Manager will monitor the risk as part of the contract management plan.



Be sure to include the Contract Professional and Agency leadership when determining how to manage a risk that is not common to Agency/vendor relationships.

CM 301 and CM 401 Communication as a Tool for Controlling Risk
Again, relying on the SAAM for guidance, information and communication are necessary to control risk and prevent a loss. In the context of contract management, consider this guidance when communicating within your Agency and externally with the vendor.

[SAAM 20.26.10] Communication is the continual, iterative process of obtaining and sharing necessary information. Management uses relevant and quality information from both internal and external sources to support the functioning of internal control. [...] Internal communication is the means by which information is disseminated throughout the Agency, flowing up, down, and across the Agency. External communication enables incoming communication of relevant external information and provides information to external parties in response to requirements and expectations.

What this section means to you.

Communication is an ongoing requirement. Not only do Agency personnel need information about the performance of the contract, the vendor needs regular, meaningful communication as well.

The contract's performance standards, acceptance criteria, testing, inspection, shipping, delivery and schedules are just a few provisions that provide the Agency and vendor with "relevant and quality information [...] to support the functioning of an internal control."

But, it is not enough to include a performance measure to collect information. *The Contract Manager must also use that information in a meaningful way to mitigate risk and prevent loss.*

[SAAM 20.26.30] Principle 13 – Uses relevant information

The Agency obtains or generates and uses relevant, quality information to support the functioning of internal control. The following points of focus highlight important characteristics relating to this principle.

- Identifies information requirements [...]
- Captures relevant data from reliable sources [...] Relevant data have a logical connection with, or bearing upon, the identified information requirements. Reliable internal and external sources

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- provide data that are reasonably free from error and bias and faithfully represent what they purport to represent.
- Processes data into information [...] Management uses the quality information to make informed decisions and evaluate the Agency’s performance in achieving key objectives and addressing risks.

What this section means to you.

The key to remember about collecting vender performance data is *“to make informed decisions and evaluate the Agency’s performance in achieving key objectives and addressing risks.”*

One very important decision is communicating risk mitigation and allocation provisions in the contract.

CM 301 and CM 401 Communicating Risk Mitigation and/or Allocation in the Contract

Once Agency leadership is comfortable with the risk evaluations, the activities move to preparing to solicit, negotiate and award the work to a vendor, i.e. the award phase. If the risk assessment process identifies risks that need to be addressed in the contract, whether the risk is accepted by the Agency or allocated to the vendor, those risks will be addressed as contract clauses.

The following chart is adapted from a list of *some* contract provisions the NCMA identified in its eBook “Managing Contractual Risk Issues” that can help monitor risk or reduce the impact of losses in a risk event.¹⁴

Contract Provisions		
Statement of work	Payment type (fixed, fee, cost, time and materials,	Term (period of performance)
Schedule	Inspection and testing	Acceptance, delivery criteria
Shipping terms	Limitations on liability	Waivers
Indemnifications, IP indemnifications	Insurance	Warranties and disclaimers
Performance standards	Termination, cancellation	IP ownership, licensing, etc.
Confidentiality, non-disclosure	Force majeure	Compliance
Dispute resolution	Time, delivery, schedules	Quality, quality assurance plans or audits
Health and safety	Choice of law	Assignment

¹⁴ [Managing Contractual Risk Issues](#)

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Contract Provisions

Written notices	Modification procedures and authority	Taxes
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Disclaimer! Each Agency has its own contract terms, conditions and contract templates. Always use the correct contract template approved by DES or your Agency. Please use the following information as guidance only—a starting point for conversations to further develop the contract language to submit with a solicitation.

According to the author of the eBook, “The language in each of these provisions needs to be very carefully crafted to ensure appropriate commercial contractual risk management. Attention must be given to the contractual and legal substance of these provisions as well as the form and format of the language of these provisions. Both are important.”¹⁵

A word of caution: *The legal clauses included in the contract and that parties commonly negotiate (where permitted by policy and law) are designed to allocate losses in a risk event between the parties, not necessarily minimize, monitor or control the risk.* For example, indemnification and limitation of liability clauses do not ensure that the receiving party gets the products or services. Those terms establish the parties’ obligations to each other and to potential third parties once a risk event happens. Therefore, the Contract Manager and Contract Professional ought to look beyond those clauses to ensure that the Agency is protected against risk and associated loss.

The following sections address four risk scenarios and possible contractual provisions to minimize, monitor and control risk.

¹⁵ [Managing Contractual Risk Issues In Commercial Contracts Management](#)

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CM 301 and CM 401 Risk Profile C: Agency-Vendor Operational Interdependencies

The handing off of work back and forth from the Agency to the vendor and back again to the Agency is an overlooked and underappreciated operational risk. The process of understanding downstream and upstream dependencies is one way to identify opportunities to mitigate interdependency operational risks.

A dependency means that one party depends on another party to provide something either before or after a scheduled deliverable.

EXAMPLE

Downstream- A very simple example of a downstream dependency is an auto-repair shop waiting for a part from a distributor to arrive before completing repairs on your automobile.

Upstream-A very simple example of an upstream dependency is an auto-repair shop waiting on your approval before making an expensive and unexpected repair to your automobile.

The goal is to minimize the impact of one party failing to complete its designated task by:

- Assigning the task in the Statement of Work,
- Monitoring the performance of the task, and
- Controlling the performance of the task.

Map out the dependencies

It is well worth the Contract Manager's time and effort to map out the upstream and downstream dependencies. Consider the following:

- What is the vendor depending on to do its work?
 - Who is the vendor going to depend on to receive information, data, approvals, etc.?
- What is the Agency depending on? (Data, reports, samples, draft versions, etc.)
- Who is the Agency going to depend on (from this vendor or another vendor)?
- Who will test, inspect or accept work? (In other words, does someone need to travel to your location for the Agency to test a system?)
- Who within the Agency will approve work and is that the same person who will formally accept the work according to the performance criteria?

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- What are the time frames associated with these dependencies?
- What are the potential barriers to receiving adequate information, data or approvals associated with the dependency?

Statement of Work

To ensure that the contract can address these types of risks, look at the *Statement of Work* to ensure that the following are included:

- Transition Planning Schedule.
 - This is a schedule to transition work from one party to another. It is not the same as vendor milestone dates, which are vendor specific. This schedule will include anticipated dates the Agency or possibly another vendor will transition its work to the vendor.
 - This language would outline the Agency criteria for approving of the transition of work from the vendor to the Agency or from one vendor to another vendor.
- Milestone Dates. There are different categories for
 - Vendor delivery,
 - Agency approval/acceptance,
 - Invoice submittals and payments.
- Vendor Representative Named as Project Manager. Some vendors prefer a title to a named individual.
- Acceptance Criteria.
 - Note the circular nature of template contracts. Templates will refer back to the Statement of Work, technical specifications, vendor's response, or applicable standards.
 - Be sure that formal acceptance or applicable industry standards are included in the Statement of Work or technical specifications. These mechanisms act as a control.
- Reports and Reporting Timeline. The vendor will need to demonstrate its compliance with transitions in the form of a report of some kind. And, how often does the Agency wish to receive these reports. Consider tying them to the acceptance criteria.
- Performance criteria.
 - Is the transition happening all at once or over a period of time? If over a period of time, consider a metric (90% complete by a date) or a Service Level Agreement (90% on-time delivery by a date).

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Contract Terms

To ensure that the contract can address these types of risks, look at the *contract template* to ensure that the following are included:

- Definitions
 - “Milestone”, “Complete”, “Defective Work”, “Agency Step-In Rights”, “Reporting”, “Approval,” etc.
 - Check to understand how these terms are defined to allow the Agency the ability to enforce the contract terms.
- Connect Transition Dates, Milestone Dates and Payment Schedules.
 - These dates are essential for transitioning the work from one vendor to another or back to the Agency.
- Cure and Corrective Action Planning for “Defective” work.
 - These terms are often highly debated in some industries.
 - Defective work ought to be aligned with the acceptance criteria. In other words, it must be crystal clear to all parties the criteria for:
 - accepting the work,
 - trigger a notice of defective work in the form of a cure letter, and
 - the precise elements of a corrective action plan.
- Performance standards. These can be in the form of industry standards, metrics (90 percent complete) or SLA (90 percent of the time).
- Testing and inspections.
 - Will vendors be required to perform tests and inspections?
 - Note that the Agency may have an important role to play in witnessing, testing or inspecting the goods and services.
- Notice periods. Align the notice periods to reality. Five days sounds wonderful in the template, but if you know your Agency needs at least 10 days to provide notice, please change it accordingly.
- Acceptance criteria.
 - Is this adequately outlined in the Statement of Work or technical specifications?

○ .

Risk Monitoring Template

Once risks are identified, it is wise to track them using the **Risk Monitoring Template** spreadsheet. Reading the column headers from left to right:

- A. Insert the questions and answers from this section of the chapter
- B. Describe Risk/ Reason
- C. Probability of Occurrence (High/Med/Low)
- D. Describe Impact on Project
- E. Severity (High/Med/Low)
- F. Immediate, Short-Term or Long-Term
- G. Mitigation Plan
- H. Frequency of Monitoring (daily, weekly, monthly, quarterly, annually)
- I. Responsible Party
- J. Target Date to Resolve
- K. Status
- L. Corresponding Contract Provisions to Mitigate the Risk

Insert the answers in the template and work with Agency leaders and the Contract Manager and/or Contract Professional to address the potential risk event(s) in the contract requirements and terms.



Stop here. Collect documents, write up the answers to these questions and set up a meeting with the Contract Professional and/or Contract Manager to include answers in the contract terms and conditions.

CM 301 and 401 Risk Profile D: Financial Risks

Introduction

“Federal Department of the Interior Inspector General Earl Devaney, who chairs the Recovery Act Transparency, estimates that organizations often lose as much as 7 percent of spending to fraud.”¹⁶ Risks and potential associated losses are particularly

¹⁶ Mitigating Contractor Risk | 5 © 2009 Dun & Bradstreet and Accountability Board, [Government Best Practices for Mitigating Contractor Risk](#)

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worrisome in governmental purchasing. Agencies shepherd Washington taxpayer funds, federal funds, and other potential sources of funds. And, while all businesses are concerned about vendor waste and fraud, Agencies must follow state laws and federal regulations in addition to following Agency policies to monitor vendor waste and fraud.

Some potential areas of concern are:

- Compliance
 - Ensuring the vendor complies with laws and regulations regarding federal funding (or other sources of funding)
 - Ensuring the vendor is appropriately insured and complies with insurance reporting requirements
 - Ensuring that subcontractors working for the vendor comply with laws, regulations and policies
- Small businesses¹⁷
 - Insufficient cash flow to complete services or deliver goods
 - Insufficient cash flow to pay sub-contractors or employees
 - Insufficient (or lapsed) insurance coverage
- Insufficient insurance for:
 - Goods or services provided to the community on behalf of the Agency
 - Complex services that pose a potential risk to the Agency (such as complex Information Technology work)
 - Vendor employees who work on-site at the Agency
- Wrong type of insurance for the transaction
- Does the Agency require proof of insurance for the duration of the contract term?
- Bankruptcy, Insolvency, Receivership
- Vendor mergers/acquisitions with other businesses
- Insufficient auditing of invoices against contract payment terms
- Lack of auditing the vendor's records when an issue arises
- Insufficient or non-existent record keeping for an audit process

Insurance

The goal is to make sure that the Agency is properly protected by the vendor. Proper protection means that if the risk event happens, and there is a loss to the Agency, the

¹⁷ RCW 39.26.005 encourages and facilitates state Agency purchase of goods and services from Washington small business.

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vendor's insurance is in place, has appropriate coverage, and can be a source of funds to the Agency.

DES provides an insurance handbook: "Alliant Insurance in Contracting Book." It can be located in the Resources Tab in the eLearning system at the DES website. And, when in doubt, contact your Agency risk manager.

Due Diligence



The most cost-effective solution for combating waste and fraud is to identify and prevent problems before they occur. That means ensuring the pre-award risk analysis is completed, and appropriate issues are addressed in the Statement of Work, terms and conditions and included in the solicitation.

At evaluation of bidders' responses to the solicitation, Agencies should evaluate the financial risks of all bidders. Prior to awarding a contract, an Agency should verify that prospective vendors:

- Have the necessary technical skills—or the ability to obtain them, such as through subcontractors to perform the work,
- Have the necessary equipment and facilities to perform the work,
- Are qualified and eligible to receive an award under applicable laws and regulations, such as those relating to small businesses,
- Are not overly dependent on subcontractors, (Agencies should understand the extent to which a particular vendor is dependent on subcontractor(s) to deliver critical products and services in the delivery of the work.)
- Have adequate financial resources—or can obtain adequate resources—to perform the work,
- Can comply with the proposed delivery or performance schedule,
- Have a satisfactory record of integrity and business ethics or have an adequate policy in place if the vendor has not worked with the Agency before, and
- Have the necessary organization, experience, accounting and operational controls to comply with laws, regulations and Agency policies.

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Monitoring Risk

The goal of consistent and frequent monitoring is to take proactive steps to avoid financial problems before they occur.

Risk mitigation strategies should strengthen vendor accountability to the Agency, monitor vendor financial and operational stability, and prevent fraud, waste and abuse.

Mitigating financial risk means lowering or eliminating the risk event and associated loss. A company's leadership, operations, profitability, and ability to perform can change rapidly. And change can increase potential risks and associated losses. Contract Managers should track a vendor's project and overall contractual performance. Contract Managers should also monitor the financial and operational health of the vendor and subcontractors (if any) to assure continued performance throughout the duration of the contract.

Check your Agency's policies. Contract Managers may need to continue to perform financial risk monitoring post-award. Your Agency might have a policy to monitor certain issues, such as proof of current certificates of insurance, or an active business license.



Understand the funding source for the work being performed. If the Agency is using a funding source, such as federal funds, the Contract Manager is required to follow those financial reporting and monitoring requirements.

Contract Terms

To ensure that the contract can address these types of risks, look at *contract terms* to ensure that the following are included:

- Definitions
 - "Insurance," "Bankruptcy," "Audit," etc.
 - Check to understand how these terms are defined to allow the Agency the ability to enforce the compliance.
- Insurance provisions and certificates, etc.
- Letters of credit
- Credit checks with national monitors
- Audit rights

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- Financial document retention (time sheets, sub-contracts, invoices, shipping verification)
- Warranty terms
- Laws, regulations and policies current and hyperlinked for the vendor to have access to current versions
- Verification of active business license, small business certification and other forms of certifications.

Risk Monitoring Template

Once risks are identified, track them with the **Risk Monitoring Template** spreadsheet.

Reading the column headers from left to right:

- A. Insert the questions and answers from this section of the chapter
- B. Describe Risk/ Reason
- C. Probability of Occurrence (High/Med/Low)
- D. Describe Impact on Project
- E. Severity (High/Med/Low)
- F. Immediate Short-Term or Long Term
- G. Mitigation Plan
- H. Frequency of Monitoring (daily, weekly, monthly, quarterly, annually)
- I. Responsible Party
- J. Target Date to Resolve
- K. Status
- L. Corresponding Contract Provisions to Mitigate the Risk

Insert the answers in the template and work with Agency leaders and the Contract Manager and/or Contract Professional to address the potential risk event(s) in the contract requirements and terms.



Stop here. Work with the Contract Professional and/or Contract Manager and Agency leaders to address potential financial risks and associated losses before issuing the solicitation.

CM 301 and CM 401 Risk Profile E: Hybrid Contracts

Introduction

Risks in hybrid contracts come from combining different performances (delivery of goods and delivery of services) into one combined solution for the Agency. For example, the vendor's services may invalidate the vendor's installation of a good and the original equipment manufacturer's warranty for that good. Therefore, the Contract Manager

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and Contract Professional must assign responsibility for the vendor's actions in an appropriate manner to protect the Agency. The best way to assign responsibility in the contract is to identify the risks at the time the Contract Manager develops the contract requirements.

Risks

- Is the vendor providing goods/services directly to the Agency or providing goods/services to the community on behalf of the Agency?
- Is the vendor buying goods for the Agency from another vendor (original equipment manufacturer)? If yes,
 - Is the vendor passing through warranties from the manufacturer?
 - Is the vendor purchasing from a distributor?
 - Or, is the vendor using their own warranty provision to warrant the materials?
- What are the Agency's obligations to the vendor (technical drawings, approvals, etc.)? List the Agency's requirements.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, do the goods need to meet a regulatory or policy obligation? List them.
- If the Agency is providing any goods/equipment for this Statement of Work, how does the Agency stay within the provisions of the original equipment manufacturer warranty for those goods/equipment as the vendor accesses the items with the good/service the vendor provides?
- List any required qualifications for the good, such as meeting OCIO standards?
- Does the good have its own software of any kind at all? If so, how does this software code impact any existing software code the Agency is using?
- List any required qualifications of the vendor and/or their staff to perform the services?
- Which one is dependent on the other? Does the good arrive first or does the service start first?
- Is the timeline for performance/delivery etc. clearly outlined?
 - Are there gaps in the delivery dates or "TBD's"?
 - Who, when and how will the "TBD's" be determined?

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Contract Terms

These terms have to tie to the work outlined in the Statement of Work. In other words, if the statement of work has performance standards but no terms for correcting the defective work before accepting it, the contract is missing an important tool. On the other hand, if the contract has provisions for correcting defective work but the statement of work does not spell out the performance standard, the contract is missing an important tool. To ensure that the contract can address these types of risks, look at *contract terms* to ensure that the following are included:

- Definitions
 - “Warranty,” “Complete,” “Defective Work,” “Acceptance” etc.
 - Check to understand how these terms are defined to allow the Agency the ability to enforce the contract terms.
- Warranty terms for
 - Vendor goods
 - Original equipment manufacturer goods
 - Services
 - Existing Agency equipment that might be under warranty
- Installation
 - Who will be installing what by when?
 - Will installation change warranty provisions?
 - Does the installation require special certifications?
- Connect Transition Dates, Milestone Dates and Payment Schedules.
 - These dates are essential for managing receiving goods and corresponding services.
- Testing and inspections.
 - Will vendors be required to perform tests and inspections?
 - Note that the Agency may have an important role to play in witnessing, testing or inspecting the goods and services.
- Cure and Corrective Action Planning for “Defective” work.
 - These terms are often highly debated in some industries.
 - Defective work should be aligned with the acceptance criteria. In other words, it must be crystal clear to all parties the criteria for:
 - accepting the work,
 - trigger a notice of defective work in the form of a cure letter, and
 - the precise elements of a corrective action plan.

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- Notice periods. Align the notice periods to reality. Five days sounds wonderful in the template, but if you know your Agency needs at least 10 days to provide notice, please change it accordingly.
- Acceptance criteria.
 - Is this adequately outlined in the Statement of Work or technical specifications?

Risk Monitoring Template

Once risks are identified, it is wise to track them using the **Risk Monitoring Template** spreadsheet. Reading the column headers from left to right:

- A. Insert the questions and answers from this section of the chapter
- B. Describe risk/reason
- C. Probability of occurrence (high/med/low)
- D. Describe impact on project
- E. Severity (high/med/low)
- F. Immediate, short-term or long-term
- G. Mitigation plan
- H. Frequency of monitoring (daily, weekly, monthly, quarterly, annually)
- I. Responsible party
- J. Target date to resolve
- K. Status
- L. Corresponding contract provisions to mitigate the risk

Insert the answers in the template and work with Agency leaders and the Contract Manager and/or Contract Professional to address the potential risk event(s) in the contract requirements and terms.



Stop here. Work with the Contract Professional and/or Contract Manager and Agency leaders to address potential risks and associated losses before issuing the solicitation.

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CM 301 and CM 301 Risk Profile F: Intellectual Property Risks

Introduction

Intellectual property law is large, expanding, and highly technical. The focus of this subsection of risk is limited to issues in the developing of requirements that Contract Managers ought to look for in custom software agreements.

There are three broad categories of Intellectual Property risk:

1. Technical and functional requirements
2. Legal ownership and protection issues
3. Aging software contracts

1. Technical and Functional Requirements

Getting the technical and functional requirements right upfront will reduce if not eliminate avoidable risks. Because of the increasingly technical, cloud-based solutions your Agency could be considering, it might be wise to work with an Agency or third party Subject Matter Expert to define the requirements. Some security aspects to consider are:

- How robust is your Agency's oversight of vendors who have access to:
 - Sensitive Agency data,
 - Community or citizen data, or
 - Access to Agency networks?
- How will you personally monitor data breaches, security breaches, etc.? If it is not your duty, then whose duty is it?
- How recently have your Agency's cyber-security policies been updated? Are those updates in the current contract template that will be attached to the solicitation?
- Does this project require background checks on the vendor's employees?
- Check your work:* How will these risks be incorporated into the Statement of Work and contract terms?

2. Legal ownership and protection issues

When talking to lawyers about Intellectual Property issues, it is best to start the conversation in layperson's terms. What does the Agency need and why? Then the legal staff can match the need to the current state of Intellectual Property law.

Working the other way around—starting with template legal terms and fitting that language to the need (technical requirements) can cause some problems. Namely,

- Old, non-current terms dictating the Agency's requirements

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- Over purchasing software (buying it rather than licensing it when a license right might be more than adequate)
- Confusing a layperson's understanding of legal terms with their legal application causing confusion about what the Agency has rights to
- Not recognizing third-party rights soon enough (as in the case of accessing existing Agency software licenses)

Software Need Checklist

- What exactly does the Agency need from the vendor? Don't worry about talking in legal terms for now, just make sure you list things like:
 - Does the Agency need to adjust the code over time?
 - Does the Agency need to get the code to work with new items the Agency might purchase, such as new elements in a security system in the near future?
 - Does the Agency need to include the custom software into an existing network?
 - Does the Agency need the ability for other vendors to access this custom code over time?
 - In terms of use of or ownership of the code, the Contract Professional and legal staff will align the template terms with what the business needs.
- How long does the vendor intend to service the software (i.e. upgrades)?
- How long does the Agency project using the software and updates? (months, years, decades)

3. Aging Existing Software Contracts



Typically, older existing software contracts are not as technically or legally comprehensive as current software contracts. Potential infringement of the original software developer's rights could be an issue.

When accessing, modifying or creating drivers for older software consider the following:

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- Will the vendor need access to another vendor's software at the Agency?
- Does the Agency have that right to access the software?
- Can this vendor legally help the Agency get that access?
- What is the solution if the Agency does not have the right to access the software? (Note, older contracts were not well written to anticipate the issues.)

Contract Terms

To ensure that the contract can address these types of risks, look at *contract terms* to ensure that the following are included:

- Definitions
 - "Warranty", "Complete", "Defective Work", "Acceptance", "License" "Confidential Information", "Installation", "Installation Date", "Updates", "Patches", etc.
 - Check to understand how these terms are defined to allow the Agency the ability to enforce the contract terms.
- Cure and Corrective Action Planning for "Defective" work.
 - These terms are often highly debated in some industries.
 - Defective work ought to be aligned with the acceptance criteria. In other words, it must be crystal clear to all parties the criteria for:
 - accepting the work,
 - trigger a notice of defective work in the form of a cure letter, and
 - the precise elements of a corrective action plan.
- Testing and inspections.
 - Will vendors be required to perform tests and inspections?
 - Note that the Agency may have an important role to play in witnessing, testing or inspecting the goods and services.
- Notice periods. Align the notice periods to reality. Five days sounds wonderful in the template, but if you know your Agency needs at least 10 days to provide notice, please change it accordingly.
- Acceptance criteria.
 - Is this adequately outlined in the scope of work or technical specifications?
 - Otherwise, it is an empty circle as templates suggest the criteria are found in the Statement of work.

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- Document the vendor and their subcontractor relationships. Not only does the Agency need to know, this will also ensure that the vendor flowed all of their contract terms to their subcontractors for enforcement.
- Document the vendor's personnel
- What would the Agency like to have happen if the vendor fails to perform on time? Can they:
 - Modify the schedule?
 - Hire another subcontractor?
- How are cost over-runs handled? Note: the overarching price cannot be increased in a competitive solicitation, but what happens if 20 percent of the work actually costs 50 percent of the total project price?
- License grant rights. These are more specific or more generic depending on the type of software being purchased.
- Ownership rights. These could reflect the software developer's ownership rights, or the Agency's rights.
- Escrow of Code. Typically, an Agency may consider opening an escrow account to hold the original version the code for a certain amount of time.
- Ownership of Agency Data. These provisions would protect the ownership rights to underlying data, tie to protecting that data and confidentiality of that data. May include retention and destruction provisions.
- Warranty – No Surreptitious or Harmful Code. Harmful code can come in a dizzying and amusing array of names (malware, bugs, bots, etc.). Ensure that your Agency is protected by including this type of warranty in the contract.
- Software Documentation. At the end of the project, the Contract Manager (not just a project manager/ subject matter expert) will want a final version of all associated contract documentation.
 - What happens if the documentation is turned over, but does not meet expectations or the criteria in the Statement of Work?
- Software Maintenance and Support. Be very clear on the terms of this support and any underlying warranty on the original installation of the software and upgrades and patches.
- Training, manuals or user guides. Be sure to include these items in the requirements. They can be overlooked.

Risk Monitoring Template

Once risks are identified, it is wise to track them using the **Risk Monitoring Template** spreadsheet. Reading the column headers from left to right:

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- A. Insert the questions and answers from this section of the chapter
- B. Describe risk/reason
- C. Probability of occurrence (high/med/low)
- D. Describe impact on project
- E. Severity (high/med/low)
- F. Immediate short-term or long-term
- G. Mitigation plan
- H. Frequency of monitoring (daily, weekly, monthly, quarterly, annually)
- I. Responsible party
- J. Target date to resolve
- K. Status
- L. Corresponding contract provisions to mitigate the risk

Insert the answers in the template and work with Agency leaders and the Contract Manager and/or Contract Professional to address the potential risk event(s) in the contract requirements and terms.



Stop here. Work with the Contract Professional and/or Contract Manager and Agency leaders to address potential risks and associated losses before issuing the solicitation.

Coaching Questions



1. **What risks have you identified using the Contract Requirements Checklist?**
 2. **If you have questions about risk, or if it is not your responsibility to perform a risk analysis, who can you ask to get the answers?**
-

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1. Does the Organization have business objectives for this contract? If not, who can you ask to get that information?
 2. Where in the contract are common risks for this type of contract addressed? (Look beyond the typical language such as limitations of liability and look at compliance language instead.)
 3. Are there any risks that are not common in Agency/vendor relationships? If so, who at your Agency ought to be a part of the decision-making process to address that risk?
-



1. Have you read the answers to the requirements checklist? Is the work to be performed clear with clear performance measures?
 2. Do you have a clear understanding of the contract language in the template and how to address any risks the Contract Manager identified? Is this language the best way to address that risk?
 3. If you have questions about how to address risk in the contract, who will you go to for advice?
-



Principle Goal

The principle goals for the award phase of the contract life cycle is to establish a contract that is:

- Fit for purpose;
- Accurately reflects the overarching agreement between the parties; and
- Documents the performance objectives and standards.

Section II has one chapter. Chapter 6 Bidder Objections: Taking Issues to Stakeholders for Approval will help you work with Agency stakeholders when vendors make objections to standard Agency contract provisions.

Chapter 6 will address the following contract management competencies:

- Initiate the contract terms.
- Identify potential risks.



The goal is to negotiate a mutually beneficial contract that ensures vendor performance.



The key to your success is to use a linear thinking process to develop an “Agency position statement” that the affected stakeholder can approve.

ATTENTION: THIS CHAPTER IS ONLY FOR THOSE TAKING CM401
Do not read Chapter 6 if you are taking CM201 or CM301.

Introduction

An important part of performance-based contracting is vendor buy-in, specifically, when the Agency is buying a particular level of performance or outcome, the vendor’s acceptance and compliance with the contract terms is essential. Therefore, in the stage where there is an apparent successful bidder, their objections to contract terms shed light into their concerns about the work the bidder is about to accept. In other words, is the apparent successful bidder willing and able to perform to the standards outlined in the contract? Is it willing and able to reduce a potential risk and associated loss to the Agency?

Some, but not all, apparent successful bidders will want to negotiate aspects of the contract. Nothing in the manual or training sessions give you (the reader) more delegated authority than you currently have. Nor does the manual or training modules give the Agency rights that conflict with the law.



Any negotiation happens only within the parameters of the Competitive Solicitation Laws. If you are uncertain about the legal permissibility of any negotiations, stop and seek advice from Agency leadership and/or the Assistant Attorney General.

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The word “negotiate” as used in this manual and training sessions, allows people with the delegated authority to discuss contract terms with a vendor within the purview of all applicable laws.

For those contracts where negotiations are permissible, it is critical that the Contract Manager and the Contract Professional understand the vendor’s concerns, especially if those concerns are in any way related to the Statement of Work.

Unfortunately, the process of negotiating contract terms is not uniform. There are several ways to track apparent successful bidder’s objections to contract provisions. Here are two common ways:

1. Bidder Issues List: The bidder raises issues in the bidder’s response to the solicitation. The Bidder Issues List is included in the response in the form of a table or log. The log will include the bidder’s reasoning for the objection. A sample table and terms for its use are included in **CM 401 Bidder Issues List**. The Bidder Issues List must set out by section or paragraph a description of each issue, concern, exception, and/or objection and include their corresponding reasoning. The bidder Issues List will be used initially to determine the responsiveness of the proposal, and if the bidder is the apparent successful bidder, the basis for negotiating those identified terms.
2. Redlines: Using track changes in Word to identify issues the bidder raises about a contract term. The process of editing contract terms is sometimes referred to as “redlining” the document as Word uses colored lines to track changes to a document.

This chapter will outline an approach that can be used for both the Bidder Issues List and redlines. This approach will facilitate conversations, not only with the apparent successful bidder’s stakeholders, but the Agency’s stakeholders as well.

Standard Terms

Contracts include terms and conditions that affect many different parts of an Agency. For example, the payment and invoicing terms in a contract affect the Agency’s accounting department. The insurance terms are designed to protect the Agency. Any changes to those terms could expose the Agency to a potential risk event and loss. The examples abound for each term.

The standard contract language was developed to address the needs of each of the departments affected by the contracts the Agency enters. *The language is standard because it addressed the average need, concern, or risk at the time the contract was drafted.*

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Because the language was drafted without considering any particular project, some apparent successful bidders may have concerns with how the standard language affects their businesses.

The Purpose of Negotiating Redlines

The purpose of conversations concerning any conflicts between standard language and an apparent successful bidder's objection is to reach a mutually acceptable resolution. It is unwise and risky to the Agency to force terms upon an apparent successful bidder that it cannot (or will not) adhere to and equally risky to the Agency to compromise on terms if they are essential to the Agency.

Please keep in mind that apparent successful bidders are operating businesses, and have their own risks to avoid, concerns to address, and needs to meet. Any concern that the apparent successful bidders brings to a particular standard term represents a legitimate business interest from the vendor's point of view. The successful bidder's outlook may conflict with the Agency's point of view.

Your Role

Your role in negotiating apparent successful bidders' objections has two key aspects:

1. Advocate for the Agency.
2. Facilitate the stakeholder decision-making process.



Bidder redlines will need to be approved or rejected by the appropriate Agency stakeholder(s). It is critical to work collaboratively to establish one Agency position for each vendor objection, and, where appropriate, include the Agency stakeholder in negotiations with the vendor. And, as always, follow your Agency's policy and procedure for engaging the Attorney General's Office.

Any conflict between the Agency's standard language and an apparent successful bidder's objection to the language does not make the apparent successful bidder bad; it makes the apparent successful bidder an advocate. Your role as the Contract Professional is to advocate for your Agency.

Because the contract language affects various parts of the Agency, many different stakeholders could be part of any decision-making process to approve or reject the apparent successful bidder's objections to the standard language. Your role is also to

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facilitate the decision-making process for stakeholders who need to review and approve changes to Agency's standard terms.

A word of caution: there is an implied expectation (and in some Agencies it's an explicit expectation) that the Contract Manager and/or the Contract Professional will use their professional judgment to prepare a suggested resolution to an apparent successful bidder objection to contract language. Since the stakeholders are usually removed from the contracting process, they will require some guidance from the Contract Manager and/or Contract Professional before a decision is made.



The process of using professional judgment to suggest a proposed course of action to an Agency stakeholder does not give you any more purchasing authority than you already have. It merely outlines a process to involve stakeholders and decision makers.

Approach

This approach is scalable; it is appropriate for a few objections as well as complex negotiations that could include dozens of objections.

1. Understand the apparent successful bidder's concern

It is distressing that apparent successful bidder's personnel will strike language or add language without providing supporting arguments. Please do not assume you understand the apparent successful bidder's arguments. Policy arguments—the Agency's or the apparent successful bidder's—were created for a business reason. Often the business reason has something to do with avoiding, reducing or allocating risk to the other party. It is nearly impossible to talk about the policy without a solid understanding of the underlying business reasoning. This is as true for the Agency as it is for the apparent successful bidders.

Ask the apparent successful bidders for supporting arguments for each change. As a representative of a public Agency, do not accept an objection without corresponding supporting information. The specter of public review is real. Written support is even more important if the Agency agrees to modify its terms to meet the apparent successful bidder's objections.

If the apparent successful bidder provides written support and you still don't understand their objections, ask them to further articulate an argument. If you don't understand it, it is likely that the stakeholder will not understand it either.

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Do not hesitate to ask the apparent successful bidder to prepare memos to explain complex issues to Agency stakeholders. If the apparent successful bidder is committed to getting approval for their objection, they will comply with this request.

2. Stakeholder Analysis

The next step is to identify who will make the decision on the objection. Are you empowered to make the decision? If so, you might want to jump to the next step.



Negotiating contract provisions is a collaborative process. Follow your Agency's policies and procedures to get further advice and support when trying to understand an apparent successful bidder's objection. Including others early on will save time and ease frustration.

If an Agency stakeholder will be impacted by an objection, reach out to the stakeholder to inform them of the potential impact.

If an Agency stakeholder will make the decision to accept or reject the apparent successful bidders' objection, then consider completing the **CM 102 Stakeholder Analysis** tool. As a facilitator of the decision-making process, you will want to communicate back to the apparent successful bidder the stakeholder's concerns associated with any rejected apparent successful bidder objection. In very complex issues, it is possible that many stakeholders will be involved in the discussions, but only one person can accept the apparent successful bidder objections. In that situation, complete the **CM 102 Stakeholder Matrix** tool to ensure that the final decision maker is fully informed throughout the entire negotiation process.

3. Develop an Agency position

This is the heart of the process where you will use your professional judgment to shape the Agency's position to the apparent successful bidder's objection.

Understand the Agency's Position

First, understand your Agency's considerations for the underlying paragraph that is being redlined by the apparent successful bidder. This point must be underscored—please go beyond “policy” arguments when communicating the Agency's position to an objection. It is critical for the apparent successful bidder to understand the Agency's underlying business reasoning and accept to comply with the policy.

Evaluate the Objections

Next, you will need to determine the amount of deviation your Agency can tolerate to have the same level of intent supporting the underlying contract provision. It's a range

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between no deviations at all to a complete re-write using the apparent successful bidder's suggested language.

In other words, will the vendor's objection limit the Agency's rights or is the objection simply clarifying language in the agreement? You will be hampered in this part of the analysis if you don't have a clear understanding of the underlying reasoning for the provision.

Choose One of Three Courses of Actions

A. Reject. The Agency could reject the bidder's objections, all or in part. Can you make this decision and communicate it to the bidder? If so, do so. Be sure to include your Agency's reasoning. If it is not your decision, then you would communicate a suggestion to the stakeholder to reject the bidder's objection. Again, be sure to include your reasoning.

B. Accept. The Agency could accept the bidder's objections, all or in part. Can you make this decision and communicate it to the bidder? If so, do so. Be sure to include your Agency's reasoning. If it is not your decision, then you would communicate a suggestion to the stakeholder to accept the bidder's objection. Again, be sure to include your reasoning.

C. Include the Stakeholder(s). If you cannot make a suggestion based on the information you have gathered so far in the process, you will need to include the stakeholder(s) to aid in formulating a proposal to the bidder's objections. Again, the stakeholders may want a proposal from you to help shape their thinking on the issue.

4. Develop a tracking sheet

The next step is to start tracking changes. This is an important part of the process in complex negotiations, which involve discussing many vendor objections. Unfortunately, this is a tedious process. It will save so much time when Agency leadership later asks where you are in the negotiations with the vendor. If you are using the Bidder Issue List, the list will act as your tracking sheet. If not, consider using the **CM 401 Negotiation Action Tracking** spreadsheet.

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5. *Communicate with the Agency stakeholder*

Finally, it is time to communicate the objection, the Agency's position, as you understand it and your suggestion (if you have one) to the Agency stakeholder. The suggestions you offer is where Contract Professionals can add value, *especially to non-legal stakeholders who are asked to approve contract language changes.*

Once you have a decision on the objection, the Contract Professional will communicate the decision to the apparent successful bidder. Anything less than full acceptance of the objection will begin the back and forth communication called negotiations about that particular objection.

As the process continues, please update the Bidder Issue List or **CM 401 Negotiation Action Tracking** spreadsheet. Track both the apparent successful bidder's concerns and the Agency's concerns until a complete resolution on that issue.



Schedule meetings between the apparent successful bidder and Agency stakeholders regarding contract language sparingly. Many apparent successful bidders will want to bypass the Contract Professionals to talk directly with the Agency stakeholders. Work within your Agency's policies and the applicable laws before granting any apparent successful bidder request to talk about a contract term with Agency stakeholders.

In the event that the Agency stakeholders should talk directly to the apparent successful bidder's stakeholders, they will want to be fully prepared to avoid feeling ambushed by the apparent successful bidder.

It must be stressed that the Contract Manager and Contract Professional should anticipate bidder's objections before sending the solicitation out for bids. The solicitation package should include all relevant contract terms and provisions. Being able to anticipate bidder's objections will reduce the need to include Agency stakeholders in negotiations by including language bidders may legitimately request from the Agency at contract development (pre-award).

Coaching Questions

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1. Is your stakeholder analysis complete enough that you can anticipate how a stakeholder will respond to an apparent successful bidder objection? What else do you need to know?
 2. What do you need to do to prepare decision makers in advance of approving/rejecting apparent successful bidder objections?
 3. Even though it is tedious, have you maintained your tracking sheet in the event a colleague has to pick up from where you left off?
-



Principle Goal

The principle goal in the post-award phase of the contract life cycle is to ensure that each party performs according to their obligations, and, when necessary, modify the contract to ensure performance.

Section III has four chapters:

1. Chapter 7: Administering, Monitoring, Relationship Management and Governance
2. Chapter 8: Modifying Contract Terms
3. Chapter 9: Dispute Resolution
4. Chapter 10: The End: Contract Closeout, Termination, Exit Management and Lessons Learned

These chapters will address the following competencies:

- Regular monitoring of vendor service levels and their contractual obligations.
- Manage contract changes and renegotiate where authority exists, and the law permits.
- Track value realization (cost savings or cost avoidance) to ensure that value is delivered for money spent.
- Encourage vendor improvement in delivering goods and services for the benefit of the Agency.
- Informal dispute management, escalation and problem resolution.
- Ensure continued contract delivery during contract closedown and assist with any new arrangements at the end of the life of the contract.
- Incorporate lessons learned when preparing for re-bidding for same or similar goods and services, when appropriate.



Ensure the Agency achieves its business objectives by confirming both the Agency and the vendor fulfill contract obligations.



Your key to success is to determine the extent of your role and level of administration, monitoring and relationship management for each contract you manage.

Once the contract is signed by representatives from the Agency and the vendor (and not before), the Contract Manager's role shifts from developing the requirements to ensuring that those requirements are met by both parties. As mentioned earlier, contract management has three duties: administering the contract, monitoring performance and managing the relationship.

CM 201 and CM 301 Characteristics for Success

According to the IACCM, these four characteristics influence contract success.

- 1) Both parties have a common and consistent view of contract obligations.
- 2) Both parties have a common and consistent understanding of the performance measures.
- 3) Both parties share important information about contract obligations with each other.
- 4) Both parties informally review problems and formally resolve problems, as necessary.

Every individual, whether on the Agency's team or the vendor's team are responsible for performance.

While these characteristics ensure success, the duties of Contract Management are not a one size fits all situation. *The nature of the goods and services delivered to the Agency will determine the extent of the Contract Manager's role and level of administration, monitoring and relationship management.*

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The factors that were important in developing the solicitation and awarding the contract are not always the same factors that will determine a good outcome.

Tips

- Contracts are a framework.
- “Standard Terms and Conditions” are often misunderstood or flat out ignored.
- Project plans are not perfect and must be updated as changes occur.
- Issues occur that the contract will not cover.
- Learn from lessons and incorporate lessons learned as often as possible.

CM 201 and CM 301 Three Duties

1. Administration

Administrative actions are associated all contracts at your Agency. They include routine tasks such as; setting up the contract in any electronic system your Agency uses, setting up any internal payment procedures or notices, tracking invoices and payments to the vendor, tracking the budget as it relates to the money spent on goods and services, authorizing payments etc. In addition to statewide policies and procedures, each Agency will have its own policies and procedures. Follow your Agency’s policies and procedures.

2. Monitoring

You’ll want to confirm that the parties perform their obligations by regularly checking things such as:

- Your Agency is paying all properly received invoices
- The vendor demonstrates work is complete.

The duties associated with monitoring for performance vary widely from Agency to Agency, from Contract Manager to Contract Manager and from contract to contract. These actions tend to be less well documented and defined at an Agency level, unlike administrative duties that are more or less documented.



Your goal when monitoring performance is to ensure that the deliverables are reviewed approved and accepted according to the terms of the contract. Deliverables can range from physical items to services including schedules, reports, tests, inspections, etc.

3. Relationship Management

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The duties associated with relationship management are primarily consistent and informative communication—communication internally with Agency stakeholders and externally with the vendor.

Relying on the SAAM [SAAM 20.26.10] for guidance, information and communication is necessary to control risk and prevent a loss. In the context of contract management, communication is an ongoing requirement. Not only do Agency stakeholders need information about the performance of the contract, the vendor needs regular, meaningful communication as well.

The contract’s performance standards, acceptance criteria, testing, inspection, shipping, delivery and schedules are just a few provisions that provide the Agency and vendor with “relevant and quality information [...] to support the functioning of an internal control.”¹⁸ (i.e. Contract Management).

As the level of contract complexity increases so does the level of contract management. As the level of contract management increases the quantity and quality of communication also increases.

Communication should not be confused with passing along information. Communication requires understanding and targeting messages that explain what needs to be done, why it needs to be done and the value of doing it. There will be people who, for any reason, do not agree with what the contract is implementing, or don’t understand why it is being implemented in a particular way.

Contract Managers will always influence someone, especially their own internal team members. To be truly influential people must trust you. People within the Agency and people working for the vendor need to trust what you are saying. Trust enables a productive Agency/vendor relationship by fostering a feeling of cooperation, cooperation within the Agency and between the Agency and the vendor. Taking the time to communicate effectively and completely can help ensure a successful contract outcome.

CM 201 and CM 301 Administering a Contract

Each Agency has its own system, policies and procedures for setting up the contract in any electronic system your Agency uses, setting up any internal payment procedures or notices, tracking invoices and payments to the vendor, tracking the budget as it relates

¹⁸ See [SAAM 20.26.10](#).

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to the money spent on goods and services, authorizing payment and closing out the contract. Please follow your Agency's policies.

By far the biggest responsibility when administering the contract is tracking and validating payments made to the vendor for goods and services. Things such as:

Invoicing and Payment Checklist

- How is the payment calculated?
 - Fixed Price or Lump Sum
 - Fee for Service
 - Cost Reimbursement
 - Time and Materials
- Payments:
 - For units delivered (quantity)
 - All at once or over a time period (Per item, per shipment, at full shipment)
- How often can the vendor invoice? (Note: this is critical to ensure that the vendor does not overcharge the State.)
- Does the invoice match the contracted price and method of calculation? (Prices can change over time, but in a fixed price, fee for service or lump sum agreement, the vendor agrees not to increase the price.)
- Is it your responsibility to track the vendor's payments against the budget for the category of goods? Do you have what you need to track these payments?

CM 201 and CM 301 Monitoring Performance

To understand the specific level of vendor monitoring for a specific contract, review the contract, even if you helped to write the requirements. Then create a contract summary. The contract summary can be as simple as a few sentences in a word document with a table to track invoices and deliveries, or as complex as several sheets in an Excel workbook.

A contract summary can help you track:

- Important specifications of the goods or services being delivered,
- Delivery schedules,
- Invoice dates,
- Reports (especially for license or certification renewals), and
- Etc.

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Many, if not all, Agencies have some checklist or spreadsheet to track these sorts of issues.



A contract summary does not replace in any way the actual contract terms and conditions. It simply gives you and an Agency stakeholder a bulleted, high-level outline of key provisions for easy access. If anyone asks you a substantive question, refer word for word to the contract terms, not your summary.

CM 201 Developing a Contract Summary

If you used the **CM 201 Requirements Checklist**, much of your work is already completed. Your first task will be to verify that the contract statement of work reflects your intentions and that nothing has changed. Second, make sure you are familiar with the contract terms and conditions (they are frequently updated). Third, write the summary and *extract the information in the checklist below from the contract* (not your internal documentation). That means you should read the actual contract from beginning to end.

If you did not use the **CM 201 Requirements Checklist**, or if you are assigned a contract that you did not help document, reading the contract might be more time consuming, but it's necessary. Take time to understand all the terms in the contract and do not hesitate to call the Contract Professional for advice in interpreting the terms.

CM 201 Contract Summary Checklist

Your contract summary will be helpful when answering general inquiries from internal stakeholders and the vendor. Use the **CM 201 Contract Summary Checklist** if you did not use the **CM 201 Requirements Checklist**.

CM 201 Frequency of Monitoring

Next you will determine how often to monitor the requirements. To determine frequency, you will need to understand your Agency's policies, goals and overall mission to the community.

For the simple delivery of goods, let's say office furniture, a one-time inspection of the goods, review of the packing slips against the shipping list and invoice against contract price list will be sufficient. On the other end of the spectrum, even a simple service to a vulnerable population will demand regular and frequent oversight to ensure not only that the vendor delivers the service, but that community is safe.

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If you have any questions about how frequently to monitor a vendor, consider talking to your Contract Professional and if necessary, your Agency leadership.

In addition, consider these factors:

- Are services delivered directly to the community? How frequently should you verify that the goods are delivered? (Weekly, monthly, quarterly, annually?)
- Is a vulnerable or disadvantaged community being served? (The community's status increases the severity of loss to the risk of late or non-delivery. Please seek advice on how often to verify services and place this risk in the Risk Monitoring Template and follow the instructions in the spreadsheet.)
- How is service performance being measured, if at all? (number of visits, number of people served)
- If there is a unit of measurement, answer these questions:
 - Who will record the data about this unit of measurement?
 - How often will the recording party collect the data?
 - In what form will the recording party report the data?
 - How will the receiving party validate that the data is accurate?
 - Who will review that data?
 - Who at the Agency will approve of the data?
- Does the service require licenses, certifications, safety inspections before performance?
- Is the vendor required to maintain insurance, license, professional designations etc. in the performance of the service?
- Could the vendor's performance failure result in damage to property or injury to person? (If yes, please talk to your Agency leaders and Contract Professional to properly monitor that risk.)

This list is far from exhaustive; it does however, point to some factors that could require more than annual monitoring of the vendor's performance. Please use professional judgment and check Agency policies when determining the frequency with which to monitor the vendor's performance.

Include the invoicing and payment checklist from above to have a complete picture of contract requirements. For more complex purchases, identifying the level of administration, monitoring and relationship management will take more of an effort to define. Please use the **CM 301 Contract Management Checklist**.



CM 201 Stop Here and Move to Acceptance

CM 301 Develop your Contract Management Checklist

If you used the **CM 301 Requirements Checklist for a Hybrid Purchase**, much of your work is already completed. Your first task will be to verify that the contract statement of work reflects your intentions and that nothing has changed. Second, make sure you are familiar with the contract terms and conditions (they are frequently updated). Third, write the summary. When writing the summary, *extract the information in the checklist below from the contract* (not your internal documentation).

If you did not use the **CM 301 Requirements Checklist for a Hybrid Purchase**, or if you are assigned a contract that you did not help document, reading the contract might be more time consuming, but it is necessary. Take time to understand all the terms in the contract and call the Contract Professional for advice in interpreting the terms. Your contract summary will be helpful when answering general inquiries from internal stakeholders and the vendor.

CM 301 Contract Management Checklist

If you did not use the **CM 301 Requirements Checklist for a Hybrid Purchase** or if you are assigned a contract to manage that you did not help develop, please use the **CM 301 Contract Management Checklist** to develop your contract summary.

CM 201 and CM 301 Approvals and Acceptance

According to the IACCM, “Acceptance is one of the most fundamental and potentially contentious issues a Contract Manager will face.”¹⁹ But, what is “acceptance”? What do lawyers mean when they talk about acceptance? How is acceptance different from approvals? These are all very valid questions shared by many Contract Personnel.

Law.com²⁰ defines acceptance as:

- n. 1) receiving something from another with the intent to keep it, and showing that this was based on a previous agreement. 2) agreeing

¹⁹ Contract and Commercial Management. The Operational Guide. IACCM. Van Haren Publishing. 2011. page 548.

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verbally or in writing to the terms of a contract, which is one of the requirements to show there was a contract (an offer and an acceptance of that offer). [...] 3) receiving goods with the intention of paying for them if a sale has been agreed to. 4) agreement to pay a bill of exchange, which can be an "absolute acceptance" (to pay as the bill is written) or "conditional acceptance" (to pay only when some condition actually occurs such as the shipment or delivery of certain goods).

*Types of Acceptance*²¹

An acceptance may be conditional, express, or implied.

Let's focus our attention on conditional acceptance. Many, if not most, of the State's contracts contain "conditional acceptance".

Conditional Acceptance, which is also referred to as qualified acceptance, happens when the Agency (called an offeree in legal terms) tells the offeror (who in this case is the vendor) that it (the Agency) is willing to agree to the vendor's offer *provided that some changes are made in the offeror's terms or that some condition or event occurs (such as meeting contract requirements)*.

That very last part of the definition from above (*that some condition or event occurs such as meeting a contract requirements*) directs your attention, as the Contract Manager, to the scope of work or any other contract provision that lays out the specific requirements for the goods or services.

That is why it is so critical:

- 1) To clearly outline the specifications for the goods or services, and

²⁰ [Law Dictionary](#)

²¹ See for more information: West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.; Two other types of acceptance are: **Express Acceptance** (happens when a person clearly and explicitly agrees—verbally or in writing—to an offer, or agrees—verbally or in writing—to pay a draft (bill or invoice) that is presented for payment in exchange for goods delivered or services rendered.) and **Implied Acceptance** (Acceptance is not directly stated but is *demonstrated* by any acts indicating a person's agreement to the offer. For example, implied acceptance happens when a shopper selects an item in a supermarket and pays for it.)

- 2) To make sure that the vendor meets those specifications.



The vendor must accept the terms and conditions to be held accountable for meeting those terms and conditions. The Agency accepts the vendor's products only when the product meets the conditions laid out in the contract. This is important. The conditions have to be laid out in the contract. ***That means those terms and conditions must be in the contract to begin with.***

If the vendor does not meet the requirements, the Agency may reject the goods and services or ask the vendor to re-do the services and replace the goods.

This is the heart of conditional acceptance. The Agency accepts the vendor's products only when the product meets some conditions laid out in the contract. This is important. The Conditions have to be laid out in the contract.

Conditional acceptance requires that the Agency follow a formal process to validate that the good is physically delivered meeting the specifications or the service was performed to standards.

And, that is why acceptance terms are in your requirements checklist to include in the contract and included in post-award monitoring.

The formal process could range from an email to a form. The formality comes from the fact that the Contract Manager took the time to validate that the goods meet the specifications and the services performed to standard.

Requirements Checklists Returning to the **CM 201 and CM 301 Requirements Checklists**, each checklist has a whole section called "Acceptance". Those checklists will provide you with some suggestions for creating the formal validation process, or acceptance procedure. Again, it might just be checking the goods are delivered or the services delivered. Or it might be a lengthy testing process that leads to acceptance of the final product.

Questions like these in the **CM 201 and CM 301 Requirements Checklists** inform the vendor, Contract Manager and the Agency Stakeholder of what conditions must be met

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to accept the goods. The acceptance information must be included in the solicitation and final contract. The lists also inform the Contract Manager who will approve things along the way to contract closeout.

- Who at the Agency will verify that the goods are delivered? What does that person need to verify that the goods are delivered?
- Who at the Agency will verify that the goods meet the technical and functional specifications? In other words, that the goods are the size, shape and form ordered? What does that person need to verify technical specifications for the goods?
- Are there inspections of the goods? When, by whom and at what point? The vendor at the point of shipment or the Agency at time of delivery?
- Is testing required to validate the goods perform as requested? When, by whom and how are those tests to be done?
- Does this good require quality assurance (QA) audits, or other procedures to verify or validate performance? When, by whom and how are those to be done?



Returning to the importance of defining clear requirements in the pre-award phase of the contract life cycle, this means both parties agree on what is required of them as outlined in the contract. That's why the contract documents need to be clear and detailed enough to create a common understanding.

Approvals

Approvals, on the other hand may not always mean acceptance in your contract. A Contract Manager might approve a sample drawing, or sample carpeting tile, or draft maintenance report. But the Contract Manager does not accept the drawing, installed carpet or final report until it meets all the technical and functional requirements. Therefore, the Contract Manager must fully understand all of the conditions of the goods and services before accepting the goods or services. Only then—upon acceptance—can the Contract Manager or Agency stakeholder approve the vendor's invoice for the accepted good or service for payment.



If your contract includes acceptance criteria and approvals, it is imperative that you perform the duties to accept the work and approve and resulting invoice. The Agency does not want silence to be interpreted as acceptance, leading to an approved invoice for a defective product or non-conforming service.



CM 201 Stop Here and Move to Relationship Management

CM 301 Agency Acceptance and Approval Obligations Checklist

If the contract contains any testing, inspection or milestone dates, the Contract Manager will have greater responsibilities to accept the work (or guide an Agency stakeholder to accept the work). When specific acceptance is outlined in the contract, know those terms in detail. Again, go back to the **CM 301 Requirements Checklist** for suggestions to outline acceptance.

To identify your acceptance responsibilities or your colleagues' acceptance responsibilities answer these questions:

Looking at the work to be completed in this contract (goods and services being delivered):

- What are the Agency's obligations (in addition to payment)?
 - Testing, inspecting, approving, etc.
 - Meetings, emails, reviews, etc.
- Looking at the list above, what are my personal responsibilities to the vendor?
 - For acceptance conditioned on the vendor delivering?
 - To approve?
- What are my colleagues' responsibilities to the vendor in the list above?
 - For acceptance conditioned on the vendor delivering?
 - To approve?
- What contract requirements do I need to communicate to my colleagues?
- How should those be communicated (meeting or email)?
- What should I do to ensure that all Agency personnel continue to perform their obligations throughout the contract? (This is usually part of your project plan or spreadsheet.)
- Note: Tests and inspections can delay the approval and acceptance process. Be sure to communicate timing to the vendor to avoid potential delivery delays.

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CM 201 and 301 Relationship Management

The day-to-day activities associated with the contract include managing the relationship with the vendor. In simpler contracts regarding the delivery of goods, regular conversations with the vendor will suffice.

Contracts for services, any service from janitorial to custom software development, requires more professional judgment and discernment from the Contract Manager. The Contract Manager will use his/her own professional judgment to determine if a deliverable (clean waiting area or functional software program) meets the acceptance criteria (see the conversation above).

It is at this point—use of professional judgment—that the relationship with the vendor becomes critical. The Contract Manager will rely on the quality of his/her relationship with the vendor to drive performance. If the Contract Manager has a good relationship, a simple call or face-to-face meeting might be enough to straighten out any performance issues. If the Contract Manager does not take the time to develop a relationship, or if the relationship is strained, both parties can feel like they are on a merry-go-round when solving problems—same problem, same excuse, different day.

CM 101 discusses the need to have a kick-off meeting as part of contract management. But, there is one very important aspect of these kick-off meetings that are usually overlooked—aligning your understandings with the vendor's. After all, you or a colleague wrote the requirements, not the vendor.

CM 201 and CM 301 Kick-Off Meeting

In many service related relationships, it is wise to hold a kick-off meeting. The meeting could be a 15-minute call or an hour-long in-person meeting. If the vendor asks for the kick-off meeting, please schedule one. It may indicate they have some questions to sort out.

In addition to the usual topics, ask these questions of the vendor. In more complex service contracts, you may choose to include the vendor's personnel, such as the people delivering the day-to-day services.

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Aligning with a Vendor

- What obligations does the vendor agree they have to perform? (Please don't assume the vendor read the Statement of Work or the final contract.)
- What roles (and individuals in those roles) will accomplish those obligations?
- What skills or functional background do those individuals have?
- What are the levels of authority?
 - Should you tell the man who comes to wax the floors to remember to wax the hallway or should you talk to the owner?
 - Should you tell the vendor's president that a test failed to meet expectations or the lead software architect? Or, both?
- What tools or systems will they use to coordinate multiple internal team members?
- What tools do they want to use to communicate with the state?
- What Agency obligations are they relying on?
 - Do you agree with those obligations?
- From the vendor's perspective, does the Agency have implied obligations to the vendor?

The **CM 201 or CM 301 Contract Summary**, which includes the state's Acceptance and Approval Obligations Checklist above, and the results of the kick-off meeting will dictate your overarching contract and relationship management strategy.



CM 201 End Chapter Here

CM 301 Long-Term, Complex Relationships

Contract Managers may need to consider more planned, frequent and managed communications with vendors who are delivering long-term and/or complex goods and services. For these more complex, long-term relationships, the contract (or common sense) will dictate the communication frequency.

Your goal is to drive performance. To do that, you need to understand the stakeholder's perceptions of the vendor's performance and future expectations (such as deadlines and deliverables). *Before any regular meeting with a vendor, consider:*

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Pre-Meeting Tasks

- ❑ Get any feedback from stakeholders on their perceptions of the vendor's performance.
- ❑ Verify their perceptions against the contract obligations (i.e. are the perceptions connected to a deliverable).
- ❑ Review performance-using data (invoices, reports, metrics, shipping labels, etc.)

Do not leave these three items to chance. A negative perception associated to an undocumented deliverable when the vendor is meeting expectations is a recipe for disaster. It sounds simple enough, but with so many things competing for your time and attention, preparing for meetings is essential to good relationship management.

Vendor Meeting

When meeting with vendors there are four stages to the meeting:

1. Discuss the stakeholder feedback or vendor performance measures in neutral terms, supporting anecdotes with data.
2. If there are issues with performance, look for ways to improve the issue by discussing ways to resolve the issue with the vendor's input.
3. Ask the vendor if there is anything the Agency needs to do to improve performance (In other words, you need to know if Agency approvals are delayed, etc.).
4. Look ahead to the next month, quarter, or year to determine if upcoming obligations can be met. Do this even when the vendor is performing. This forward-looking element in relationship management is often overlooked.

Post-Meeting Wrap Up

Once the vendor meeting is finished, do these three things:

1. Circle back in writing to all stakeholders with discussion items, resolutions, etc.
2. Consider any changes the Agency might make to improve any of its performance issues (i.e. tighten up approval timing).
3. Follow up with the vendor in writing and keep the documentation. This documentation becomes the basis for lessons learned.

All three of these tasks form the lessons learned for any contract renewal, re-bidding, or revising of the solicitation for future work.



CM 401 Complex Governance Structures



The goal is to design and *institutionalize* an effective vendor governance structure to deliver strategic insight. (Institutionalize means have a system in place that works even though key individuals leave the organization and even though the champion is on to other initiatives.)



The key to your success is to develop consistent, formalized processes, reporting, and roles structure. Ideally, the vendor would participate in the implementation of the structure in that they would assign the right people to fulfill the reporting and roles structure.

Too often, parties do not realize the heightened level of vendor relationship management—larger, complex, and long-term relationships are required to deliver desired outcomes. This module will outline best practices for the Contract Professional when working with highly strategic vendor relationships. The focus will be on the Contract Professional’s role in formalizing the mechanisms for the Agency stakeholders.



If your Agency wants specific vendor participation in governance meetings, add a governance section, schedule or exhibit to the contract. That means drafting governance provisions and including them as you would performance measures—something that is enforceable to drive performance.

CM 401 Definition of Governance

Governance provides consistent management supported by cohesive policies and decision-making rights that allow the parties to cooperate for the duration of the contract.

The following sections address the three main functions of vendor governance. First, the governance structure will operate despite changes in personnel. For larger interdependent vendor agreements, governance cannot depend on one champion or stakeholder. Second, there is a documented structure that is easy to follow. And, finally,

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that the vendor management meetings themselves move from analyzing past performance, to how the relationship will meet objectives despite any challenges.

CM 401 Purpose of Governance Mechanisms

Your role will be to work with the Agency stakeholders to match the level of vendor governance to the interdependency and complexity of the contract. That means that the most strategic, interdependent and complex relationships may require the vendor's participation in governance structures. That required participation might need to be included in the contract terms. Other less strategic, less interdependent relationships may require elements of governance structures at times, but not necessarily as contractual provisions.

CM 401 A Structured Approach Prevents “Strategic Drift”

Institutionalized vendor governance prevents strategic drift. Strategic drift means:

- Monthly or quarterly meetings are not scheduled as frequently or at all.
- Topics at those meetings begin to slip to anecdotal past behaviors void of data to support conclusions.
- Vendors start to lose sight of priorities and are more reactive than proactive when solving problems.
- The Agency thinks the vendor is not proactive, or not doing its job.
- Agency stakeholders may want to work with a different vendor when in reality they already have a good vendor, but the relationship went adrift.

Strategic drift occurs when the Agency and vendor don't work to maintain their relationship and/or work to update strategic priorities. This typically happens after a few good months or quarters. Senior management for either organization “checks out,” moves on to other initiatives and leaves this “successful relationship” to manage on its own. *In fact, relationships can manage on their own if Contract Professionals document a vendor governance structure.*

CM 401 Three Steps to Develop a Vendor Governance Structure

In the Vested Outsourcing Manual: A Guide for Creating Successful Business and Outsourcing Agreements,²² the authors outlined several elements of a robust vendor governance structure. We will discuss three of those elements.

²² The Vested Outsourcing Manual: A Guide for Creating Successful Business and Outsourcing Agreements, Vitasek, Crawford, Kawamoto and Nyden, Palgrave, 2009.

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1. Create a **tiered management structure**
2. Establish **peer-to-peer communication** protocols
3. Develop a communications **cadence**, tempo, or rhythm

Step #1: Create a Tiered Management Structure

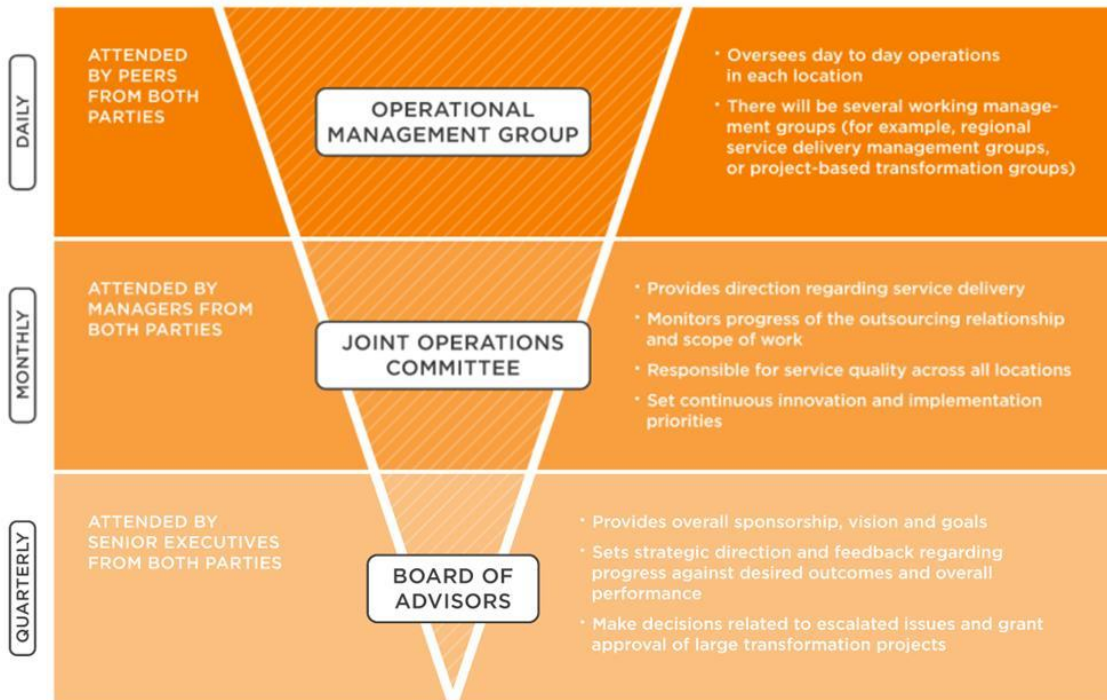


Figure 1 Vested™ Governance Model

Even though the book's title says outsourcing, the governance principles are scalable to non-outsourcing, highly strategic relationships. This is the first element: a tiered management structure. If you have worked on any large, complex IT contracts you've likely been a part of some form of tiered structure. The point of this manual and training series is to document this structure. A best practice would be to document this at the time of solicitation and include it in the contract. Often, parties do not realize they need this level of relationship management until well into the project. In that case, it is still wise to document it. Whether to include the documented governance structure as an amendment is up to the Contract Professional following Agency policy and applicable law.

Operational Management Group

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At the top—the biggest “v”—sits the Operational Management Group. This group *implements the service in day-to-day work*. This group may meet weekly or monthly. This group will likely include both organizations’ Subject Matter Experts.

Joint Operations Committee (This is a Management Committee)

Next, in the middle of the “v,” sits the Joint Operations Committee or Management Committee. This group is comprised of Agency leaders, the Contract Manager, and the vendor account manager(s). Its members provides *direction regarding implementing* the work and monitors the overall delivery schedule.

The Board of Advisors

The Board of Advisors provides overall sponsorship and develops the strategic direction for the Agency’s relationship with the vendor. That strategic direction is augmented with the vendor’s resources. In other words, this committee answers: How can this vendor help this Agency meet the strategic target?

At first, this committee will not include the vendor. Once the contract is executed, the vendor’s leader would join this committee for the duration of the relationship. Only senior executives from both parties sit on the board; in other words, someone from each organization with the authority to make strategic decisions. This is usually more than an account executive at the vendor’s organization.

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Step #2: Establish Peer-to-Peer Communication Protocols

In this chart, from the Vested Outsourcing Manual²³, the left chart outlines the traditional—bow tie—approach to relationship management. The right chart outlines the peer-to-peer—reverse bow tie—approach to governance.

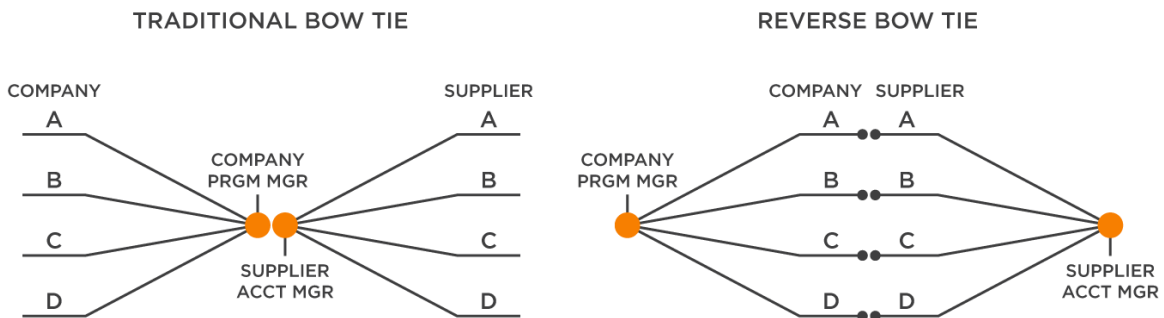


Figure 2 Vested™ Reverse Bow Tie Model

Typically, it is more difficult for the Agency to determine who sits on these committees (the A, B, C, D markers in the right-hand chart) than the vendor. Vendors accustomed to complex delivery work will likely have a reverse bow tie model in place. Unfortunately, Agencies often start with the traditional bow tie model. When Agencies fail to identify Subject Matter Experts within the Agency to work with the vendor’s Subject Matter Experts until a problem occurs, and then it might be too late.

When establishing a tiered structure, it is important to develop direct lines of communication. The problem is that people who are not used to directly communicating with the vendor need some guidance. That is where the peer-to-peer protocols come in handy.

One concern that many Agency members have is *limiting the roles* of the Subject Matter Experts to delivering daily work and solving associated problems. This will be especially true when the Agency is relying on Agency Subject Matter Experts, vendor Subject Matter Experts, and another third-party consulting Subject Matter Expert to deliver the project.

Peer-to-Peer Protocol

²³ The Vested Outsourcing Manual: A Guide for Creating Successful Business and Outsourcing Agreements, Vitasek, Crawford, Kawamoto and Nyden, Palgrave, 2009.

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To support a reverse bow tie and to ensure that roles and responsibilities are understood, it is wise to create a simple chart. The left column represents the tiered governance structure. The middle two columns represent the reverse bow tie, direct communication relationships. The next two columns to the right detail the committee's role and responsibility.

Committee	Agency Member(s)	Vendor Member(s)	Role	Responsibility
Operational Management Group	Sally Abe Michelle Randy	Bob Peter Alice Astrid	Daily Work to Implement A,B,C	Delivery of A,B & C KPI 1,2,3, Report to Management Committee
Joint Operations Committee	MaryAnn Greg Anne	Lori	Management at each organization	Guidance for all issues on A,B,C KPI 4 & 5 Report to Board
Board of Advisors	Taylor Monica	Gary	*Director and Deputy Director of Agency *President of Vendor Division	Responsible for all strategic decisions.

Note that the Agency Contract Manager sits on the joint operations committee. In some relationships, the vendor will also send their Customer Manager to this committee meeting.

Step #3: Develop a Communications Cadence (frequency)

The final step is to develop a communications cadence document. It is important to stress that people will be highly reluctant to meet, let alone stay on schedule or solve problems without some guidance on how often they should meet. This step is critical and cannot be skipped.

A communication cadence is simple. It is a documented frequency of meetings. It can be as simple as adding a column to the Peer to Peer Protocol chart above.

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Committee	Agency Member(s)	Vendor Member(s)	Role	Responsibility	Communication Frequency
Operational Group	Sally Abe Michelle Randy	Bob Peter Alice Astrid	Daily Work to Implement A,B,C,	Delivery of A,B & C KPI 1,2,3, Report to Management Committee	Minimum weekly unless an issue is identified, and then daily until resolved.
Joint Operations Committee	MaryAnn Greg Anne	Lori	Management at each organization	Guidance for all issues on A,B,C KPI 4 & 5 Report to Board	Minimum monthly; resolve escalated issues within 5 business days.
Board of Advisors	Taylor Monica	Gary	*Director and Deputy Director of Agency *President of Vendor Division	Responsible for all strategic decisions.	Every six months for the duration of the agreement

CM 401 Moving to Insight

Once this structure is in place, the goal is to move from looking at past performance for solutions to generating insight to meet future goals. To move from oversight of the work to meeting future goals with insight, the organizations must tie the governance structure to a solid scorecard.



During the pre-award phase of the contract life cycle, Agency stakeholders (including the Contract Manager and Contract Professional) developed the work and requirements using the **CM 401 Strategic Relationship Requirements** document. That tool is a spreadsheet. If the Agency filled out the spreadsheet, the Agency will have a high-level scorecard to track the overall performance of the relationship.

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We now come full circle to the importance of metrics, SLAs and KPIs. In long-term relationships to meet Agency objectives, it is wise to develop a scorecard (**CM 401 Strategic Relationship Requirements** spreadsheet) specific to the relationship *and a governance structure to meet the demands of the relationship.*

Because the scorecard has the high-level information for the relationship in one place, it is a great tool for monitoring performance and guiding relationship communication about meeting future performance goals

Insight means placing an emphasis on looking ahead. Each committee looks ahead to ask themselves:

- What business challenges are looming, both internally and externally?
- What economic challenges are looming?
- How do we continue to meet our goals, KPIs and other metrics considering these challenges?

CM 401 Sample Governance Contract Terms

The **CM 401 Sample Governance Contract Terms** provides guidance on language to include in the solicitation and contract.

CM 401 Advanced Governance Transitioning the Work



The goal of the transition plan is to maintain Agency business during the handoff of work to the vendor.



The key to your success is to establish a written process to make sound decisions during the transition period.

CM 401 Introduction

Launching large, highly strategic projects requires a plan to begin to transition the work to the vendor. This is especially true for complex information technology projects.

Transitioning work should be included in a governance provision. A best practice would be to document this plan at the time of solicitation and include it in the contract. Often, parties do not realize they need this level of transition management until well into the project. In that case, it is still wise to document it. Whether to include the documented

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plan as an amendment is up to the Contract Professional following Agency policy and applicable law.

Collaboration is Critical

There is an obvious need to work collaboratively to launch a project. If there is considerable work to be done by the vendor, which then needs to be transitioned at some point to another vendor or back to the Agency at completion, the contract should include a formal process to manage those transition phases—initiation, mid-project, and completion.

But these phases are often overlooked. A transition plan outlines how the project will transition work to the vendor, from one vendor to another vendor, or back to the Agency.

Planning for transitions—transitioning work to the vendor or between vendors working for the Agency during the project and back to the Agency—is crucial.



The Transition Plan should be developed by the Agency in the pre-award phase. The Transition Plan will affect the vendor's timing and to be fair to the vendor, it ought to understand the timing involved to approve transitions (which are different from the acceptance procedures).

CM 401 Three Elements of a Transition Plan

There are three components to a successful transition plan.

1. Develop the Transition Plan.

As mentioned above, this is obvious, but overlooked. Too often, project managers will rely on the vendor's project schedule as a transition plan. But, vendors do not know or have any insight into the Agency's decision-making process. Vendors also don't know what needs to be done by Agency personnel to transition the project to Agency upon completion or to another vendor to complete part of the project.

To develop a plan, consider things such as:

- What needs to be done to prepare to launch the project?
 - What will be handed over and by whom to the vendor?
- Are there any mid-project transitions?
 - If so, what needs to be done to prepare for the project?

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- What will be handed over and by whom to whom (the Agency or another vendor)?
- ❑ What needs to be done to prepare to complete the project and transition the work back to the Agency?
 - What exactly will be transitioned to the Agency?
 - Who at the Agency will accept those transferred deliverables? (This is tied to the acceptance criteria in the Statement of Work.)
- ❑ What reports will Agency stakeholders need to track the progress of any transition?
- ❑ Who will be involved in the transitions (list these people from both the vendor and the Agency—although the names or titles might not be included in the contract)?
- ❑ Are technically skilled personnel part of the transition team at the Agency and vendor?
 - At the Agency, are the personnel in place for each of key positions you outlined above?
 - At the vendor, are the personnel in place for each of key positions you outlined above?
- ❑ The detailed timing of events including:
 - Assumptions parties are making about timing;
 - Key activities, milestones, and decision points;
 - Key dependencies (who is dependent on whom for what);
 - Performance criteria to be measured and achieved at each stage of rollout;
 - Go-live criteria;
 - Quality control and delivery management procedures; and
 - Testing methodology and criteria. (This is tied to the acceptance criteria in the Statement of Work.)
- ❑ Transition project management protocols, such as:
 - Progress review meetings;
 - Reports (reporting);
 - Issues (dispute) resolution.

2. Develop a Process to Maintain Continuity of Resources

At the time of negotiating the contract, mutually identify a limited number of personnel who are designated as key personnel for both parties. These people's names are not necessarily listed in the contract, but the titles may be included in a "Key Personnel" clause.

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The point is to maintain the same team from the initial solicitation process to completion, where possible. A common concern when transitioning work is the continuity of critical personnel. When team members change—at the Agency and at the vendor—the Agency can sometimes lose progress made towards completion of the project.

Another consideration is developing a process for communicating key personnel vacancies such as for a prolonged medical leave or other extended time away from the project.

You may consider a provision that alerts the Agency when the vendor removes, replaces, or reassigns key vendor personnel prior to a transition timeframe. Many businesses require this of vendors who are providing strategic services. However, it should be included in contract language as enforceable, or a vendor may not comply with an Agency request for information about the timing of the movement of key vendor personnel. Another consideration is developing a process for communicating vendor key personnel vacancies to Agency leadership. To the best of the Agency's ability, include the vendor's personnel in the communication campaign about vendor's key personnel.

3. Develop an Effective Communication Campaign

A communication and change management process is crucial during transitions. Agency stakeholders may legitimately be unreceptive to changes from transitions. If stakeholders do not understand why the change is necessary, or may be new to the project, they could delay (or derail) transition phases. Include the vendor's personnel in the communication campaign.

CM 401 Risk Assessment

The team also should outline potential risks to the transition. A risk assessment exercise at the inception of the relationship enables the parties to look at potential risk events before they occur and jointly design methods to overcome issues as they arise (i.e. the vendor's proposal would include appropriate transition planning based on the Agency's description in the solicitation). The team can use the **CM 301 Risk Monitoring Template** introduced in Chapter 5, but it will focus on transition risks.

Chapter 8 Contract Modifications



The goal is to effectively modify a contract (where authority exists, and the law permits) to meet Agency goals.



The key to your success is to avoid modifying a contract for foreseeable and avoidable changes (that should have been included in the Statement of Work).

CM 201 and CM 301 What is Change

Change is any alteration, enhancement, deletion, or substitution to an existing contract.

If the contract terms are still being negotiated with the vendor, the Contract Manager does not follow the change control process.

Because Agencies work within the competitive solicitation laws²⁴, contract modifications are rare.

Competitive Solicitation RCW 39.26.120

(1) Insofar as practicable, all purchases of or contracts for goods and services must be based on a competitive solicitation process. This process may include electronic or web-based solicitations, bids, and signatures. This requirement also applies to procurement of goods and services executed by agencies under delegated authority granted in accordance with RCW [39.26.090](#) or under RCW [28B.10.029](#).

(2) Subsection (1) of this section applies to contract amendments that substantially change the scope of work of the original contract or substantially increase the value of the original contract.

²⁴ See [RCW 39.26.120](#).

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There are likely legal restrictions on an Agency's ability to modify or amend an existing or proposed contract. Additional clarifications that could change an existing contract:

- Amending a contract to extend its term without a new competitive solicitation or a determination that one of the exceptions to competition apply.
- Changing or eliminating contract language required by a third-party grant agreement, licensing agreement or other legal requirement.

RCW 39.26.125 All contracts must be entered into pursuant to competitive solicitation, except for:

- 1) Emergency contracts;
- 2) Sole source contracts that comply with the provisions of RCW [39.26.140](#);
- 3) Direct buy purchases, as designated by the director. The director shall establish policies to define criteria for direct buy purchases. These criteria may be adjusted to accommodate special market conditions and to promote market diversity for the benefit of the citizens of the state of Washington;
- 4) Purchases involving special facilities, services, or market conditions, in which instances of direct negotiation is in the best interest of the state;
- 5) Purchases from master contracts established by the department or an Agency authorized by the department;
- 6) Client services contracts;
- 7) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process when the director determines that a competitive solicitation process is not appropriate or cost-effective;
- 8) Off-contract purchases of Washington-grown food when such food is not available from Washington sources through an existing contract. However, Washington-grown food purchased under this subsection must be of an equivalent or better quality than similar food available through the contract and must be able to be paid from the Agency's existing budget. This requirement also applies to purchases and contracts for purchases executed by state agencies, including institutions of higher education as defined in RCW [28B.10.016](#), under delegated authority granted in accordance with this chapter or under RCW [28B.10.029](#);

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- 9) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;
- 10) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;
- 11) Contracts for services that are necessary to the conduct of collaborative research if the use of a specific contractor is mandated by the funding source as a condition of granting funds;
- 12) Contracts for architectural and engineering services as defined in RCW [39.80.020](#), which shall be entered into under chapter [39.80](#) RCW;
- 13) Contracts for the employment of expert witnesses for the purposes of litigation; and
- 14) Contracts for bank supervision authorized under RCW [30.38.040](#).



If you are unsure whether the contract permits changes, reach out to your Contract Professional or Assistant Attorney General for clarification. Your Contract Professional will work with you to determine the best route to alter a contract that has restrictions to its modification.

If there are restrictions to contract modifications, and as the Contract Manager you believe that it is in the best interest to change an existing contract, please reach out to your Contract Professional to follow the formal re-solicitation process.



As a best practice, do a thorough job of developing requirements during the pre-award phase since the Agency may not be able to modify the contract post-award.

CM 201 and CM 301 The Contract Manager's Role in Change Management

This chapter will address those circumstances in which there exists authority in the contract and legal permission to modify an existing contract. Any change to an existing contract requires a Change Control Process and Change Management skills.



The Contract Manager must include the change control process in the contract requirements, the solicitation and contract terms. If this process has been followed, and the law permits contract changes, follow the advice in the rest of this chapter.

If not, and as the Contract Manager you believe that it is in the best interest to change an existing contract, please reach out to your Contract Professional to follow the formal re-solicitation process.



CM 201 End Chapter Here

In more complex and longer-term contracts, contract changes are not a sign of failure, but a reflection that business conditions are not static. Change is an important part of the contract life cycle. And, no matter how much effort people put into the creation of the contract documents, there will be errors, omissions, or incompleteness. Additionally, as the complexity of the relationship between the Agency and vendor increases, even more likely the final version of the contract may require changes at some point in time.

Change happens in the post-award phase of the contract life cycle because once the contract terms are signed only a formal process can alter the terms of the agreement.

CM 301 Some Reasons for Change

Change can take many forms such as business, regulatory, and personnel changes, all of which can affect the contracts Agencies have with vendors. Here are some reasons to modify an agreement:

Business and Regulatory (Compliance) Changes

- Changes to Agency business needs, requirements, or funding
- Changes within the organization that could impact the vendor's ability to perform its work
- Changes in technology that could impact the vendor's ability to perform its work
- Changes in regulations or legislation that could impact the vendor's ability to perform its work
- Changes in relevant Agency policies and procedures

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While business and regulatory changes cannot be avoided, changes to the contract requirements can be dramatically reduced by paying special attention to the development of contract requirements before the contract is sent out for solicitation.

CM 301 Change Requires a Control Process

Contracts that anticipate change include a contract modification process in the terms of the contract. The contract language might be titled “Change Management Process or Scope Change Process.” At a minimum, all Contract Managers should understand the internal Agency contract modification process, since changing the contract might be an outcome of a dispute resolution process. A change control process includes the contract terms and Agency policies and procedures to change an existing contract pursuant to applicable laws and policies.

The Change Control Process should contain procedures that the parties use to request, assess, process, and approve or reject modifications to the agreement. The parties develop a formal written change request that either party can use to initiate a formal change to the agreement. A change request should be required for modifications that affect the price or related costs of the services, affect the delivery of the service, or affect the obligations of either party.

The Change control process should include:

- A formal change form (document). Check with your Agency for this document. This form should fully describe the proposed change. If a form does not exist, see the **CM 301 Change Management Checklist**.
- The Agency approval process (i.e. signatures needed).
- Formal documentation procedures for updating the agreement itself. The Contract Professional will document the changes to the contract.
- Change control tracking form to help the Contract Manager keep track of the changes to the contract, obligations and compliance to the changes.
- Verification of compliance to the change.
- An escalation procedure if the Agency denies a vendor’s change request.

Until the change is approved through a formal change control process, the change is a proposed change. Please use the term proposed change in all communications until the modification is formally approved as a formal change to the contract by the authorized Agency person.

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Even if the proposed contract change does not appear to have a visible effect on contract language, call your Agency Contract Professional as the changes will still need to be recorded or it could later become a source of a problem or full-blown dispute.



A Word of Caution

If you face a situation in which you, or the vendor, want to modify an existing contract, and if the contract permits changes, please proceed with caution. Changes can inadvertently affect the Agency's mission, and/or stakeholders. Any change should include a plan to communicate the change to Agency stakeholders. Additionally, changes to the contract language can create conflicts between existing terms, conditions and obligations, and the changed terms, conditions and obligations. These conflicting terms often create loopholes, which may lead to a dispute later on.

Changing an existing contract will require that you follow your Agency's procedures on creating contracts in the first place. Contract modifications will require the same processes surrounding internal review and approval process. Furthermore, the solicitation process may prevent the vendor from changing the scope of work after the contract was awarded. The Contract Professional will work with you on this process in the same fashion as when the contract was originally initiated.



When the contract must be changed, ensure that the change is properly recorded. Any request for a change to the contract should be in writing and becomes effective only when both the Agency and the vendor sign the contract changes.

CM 301 Change Management Checklist

If you can modify the contract, please complete the **CM 301 Change Management Checklist** and provide the information to the Contract Professional.



We revisit the issue of risk again. The Contract Manager must assess the risk associated with the proposed change. Many changes to more complex agreements may affect the original risk profile, and therefore, the risk analysis may need to be revisited.

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Agency

- What is the risk (potential for loss) to changing the contract?
- What is the risk (potential for loss) to not changing the contract?
- What controls are in place to reduce the risk?
- What approvals does the Agency need to document and manage the risk?
- If the change to the contract is approved, how will the Contract Manager ensure compliance?
- Check your work.* Document the risk analysis and the approval process.

Vendor

- What is the vendor's internal approval process for contract changes?
- Who at the vendor will oversee the change process for the vendor?
- Who at the vendor will implement the changes to the contract?
- What is the vendor's change control process to ensure that risks are mitigated?

If the proposed change is approved by the Agency and formally documented as a contract modification, consider calling another kick-off meeting (see Chapter 7).

What is the Communication Plan?

Stop to evaluate the affected Agency stakeholders. Many contract changes can affect other parts of the Agency. Often these impacts are not initially anticipated when discussing the proposed change with the vendor. Be sure to include time to include discussion and approval of the contract change with many colleagues within the Agency. A Contract Manager may not want a permissible contract change revoked because of an overlooked stakeholder and an underappreciated impact of the change.

If the proposed change is approved by the Agency and formally documented as a contract modification, consider calling another kick-off meeting, see Chapter 7. The Contract Manager facilitates the communication process. For more information on the facilitation skills, see Chapter 9.

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Coaching Questions



1. Why is the asking party requesting a contract modification?
 2. Does the contract really have to be modified, or does a business process have to be followed or modified?
-



1. How will the proposed modification affect the relationship?
 2. How will it affect the other parts of the agreement? Remember that contract language is interconnected. When you change one part, you may also be affecting another part of the agreement.
 3. What happens if one party does not agree to the modification? What is the process for “appealing” the decision?
-



The Contract Manager's goal is to manage the informal dispute resolution process to a successful settlement.



The key to your success is to settle disputes in the best interest of both parties.

CM 201 and CM 301 Definition

For the purpose of this manual and training modules, dispute means a contractual disagreement or misunderstanding between contracting parties' specific to contract provisions or language.²⁵

Disputes are an unfortunate part of the contract management process. The best way to avoid disputes is to fully define the project scope in the contract requirements and then manage the contract requirements effectively.

Disputes often happen because of miscommunication, a divergence from agreed upon procedures, and omissions in the contract documentation.

If an Agency does not have a robust performance management process in place, then it is more likely to see performance breakdowns. Those agencies without a performance management process and without a dispute resolution process have two equally ugly options:

1. Cope with the poor performance while leading the vendor to believe that performance is adequate, or
2. Terminate the contract and risk internal service disruptions.

²⁵ See CM 101 Module 4, referencing the National Institute of Government Purchasing.

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In a culture that avoids disputes, the Agency also lacks the data to improve the vendor's performance. This is especially problematic when the vendor serves the community directly on behalf of the Agency.

Disputes happen because the parties have differing perceptions or beliefs about a fact or circumstance. When contract obligations are unclear, ambiguous, or incomplete the differences between the parties grow into a dispute.

The very complexity of the project and resulting relationship between the Agency and the vendor can tend to increase the frequency of disputes not because of any nefarious intentions of the parties, but rather, because the complexity itself is not easily documented and managed.

CM 201 and CM 301 Contract Manager's Role

The Contract Manager's role is to settle all issues and problems at the Contract Manager's level of authority where appropriate. When the dispute cannot be settled with your level of authority, the Contract Manager should escalate the issue to the appropriate Agency person to aid in resolution. Agencies should carefully consider a variety of factors in determining when to contact their assigned AAG for legal advice and assistance in resolving a dispute, including complexity of the contract and issues involved, difficulty of the relationship, potential for significant disruption of the contract, and the probability that the dispute will escalate. The greater the complexity, significance and potential for escalation, the more important it is to involve your AAG earlier in the process.

Contract Managers should resolve disputes quickly. Do not ignore any red flags, such as missed milestone dates or unpaid invoices. Unresolved disputes will only grow out of proportion.

There are two aspects to resolving disputes.

1. Identify the root cause of an issue, and
2. Then problem solve to fix it.

If you learn of non-performance (regardless of whether it is the Agency or the vendor who is not performing) initiate a root cause discussion. Your role would be to facilitate the conversation until everyone understands why the party is not performing an obligation.

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Remember, the pre-award phase comes back around. If your Agency is displeased with a vendor's performance, you will want any future solicitation to include language to help ensure performance.

Your conversations and documentation of lessons learned will aid you when it comes time to reissue a solicitation for the same or similar work. In other words, the issues you discover in the informal dispute process you would include in the scope of work, acceptance procedure and contract terms.

CM 201 and CM 301 An Informal Process to Resolving Disputes

First, Contract Managers will need to recognize that there exists an unresolved issue with the vendor's performance. It is very easy for one party to ignore an issue that the other party finds important. Once you see an issue, follow these steps in order.

Step 1 – Gather information from all sides of the dispute

Talk to people from the vendor's organization as well as people in your organization. Only in that way can you weigh all the information to get a fuller picture of the root cause of the problem. Ask open-ended questions to get the issue fully defined and understood by all the parties.

Step 2 – Create a safe meeting to talk about things

Create a safe setting in a meeting to talk about the problem and brainstorm a solution. By safe, the parties cannot blame one another or show any anger. It's your role to calm people to ensure that all parts of the problem are revealed, not just the parts that make your organization look good and the vendor's organization look bad.

Step 3 – Build a bridge to resolution through shared interests

Build common ground in the meeting. You will literally use words such as, *"we all can agree that . . . is important to both organizations."* You may say something to this effect so often you'll feel like a broken record, but it is the best way to move people towards a workable solution.

Step 4 – Validate that the solution will functionally work

Before the parties can implement the solution you are discussing, stop to validate that all of your stakeholders and the vendor's stakeholders can meet any newly agreed upon solution. This is an important step in the process. Since it is your role to ensure compliance to the new requirements, validate performance before any formal amendments are issued.

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Step 5 – Document, document, document

The final step is to summarize the resolution in some written form. In very informal settings, the parties may document the issue, the solution and the target date for resolution in a memo attached to an email. Be sure to circulate the memo to all Agency and vendor stakeholders. Other more complex circumstances will require a contract modification, change order, or amendment. In that circumstance, the Contract Manager will involve the Contract Professional.



CM 201 Stop Here and Move to When Issues Persist

CM 301 Facilitation Skills

Performance “negotiations” are NOT the formal contract negotiations that are governed by the competitive solicitation laws and Agency policy. Performance “negotiations” are back and forth conversations to reach an agreement when the Agency and the vendor don’t see eye-to-eye on the solution to the performance issue.

An organization’s willingness to negotiate is—at some basic level—a confession of mutual need. Those needs are reflected in the organization’s interests. Bringing facilitation skills to dispute resolution means not only understanding the Agency’s interests, needs, concerns and problems, but also understanding the vendor’s interests, needs, concerns, and problems with the goal being to resolve a performance issue.

Contract Managers can benefit from incorporating facilitation skills into their already bulging tool kit. Facilitators act in a more neutral manner, than say an advocate, such as a lawyer who is representing a client in court. Facilitators seek to manage the conversation between many stakeholders who will resolve a dispute. Facilitators do not have the authority to “make” someone do something.

The Contract Manager’s role as a facilitator should come from a neutral place, not as an advocate for your Agency nor for the vendor. It takes some time to adjust from advocate to neutral.

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The goal of a neutral facilitator is to empower the stakeholders to solve the problem without the aid of a third-party decision maker (such as a judge or arbitrator). The Contract Manager should embody the facilitator's mindset and view the situation from an Agency's perspective and that of the vendor.

Solving issues post-award requires the Contract Manager to:

- Encourage participation from both parties,
- Promote understanding to ensure future performance,
- Foster inclusive decisions (which leads to greater buy-in), and
- Cultivate shared responsibility.



Your key to success is your ability to get the problem solved without using "muscle" to solve it.

For example, the right solution for your Agency may include meeting implied or implicit performance obligations to ensure that the vendor can perform on its end. That's why the CM 301 Requirements Checklist asks the Contract Manager to document implied Agency obligations, and give those implied obligations to the Contract Professional to include in the contract terms and conditions.

CM 201 and CM 301 When Issues Persist

Despite all of the Contract Manager's best efforts, some issues may persist. When that happens, follow these steps in order:

1. Increase the amount of contract management both from the Agency and from the vendor.
2. Ensure on-site vendor representation from a person with the skill set needed (look at qualifications, etc.) at all performance related meetings.
3. Escalate to Agency stakeholders and provide proper documentation about:
 - the issue,
 - steps taken to resolve the issue so far, and
 - suggested steps going forward.
4. Terminate for cause or cancel for convenience, or other options that the Agency leadership determines to be appropriate.

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Please see CM 101 Module 4 for more information regarding additional guidance for terminating a contract.



Termination is a complex decision that the Contract Professional, Agency Leadership and the Assistant Attorney General need to consider carefully. Please send all documentation to the Contract Professional to make sure Agency policies and procedures are followed.

In following these steps, confirm that the Agency and the vendor allocate people to ensure compliance to the resolution. It is also important to maintain an issue register log to track the issue and its resolution.

Coaching Questions



1. **What is the work around dispute resolution process at your organization?**
 2. **Where in the past have you been successful in resolving a dispute between your organization and counterpart? What made that a success?**
-



1. **What is your organization's non-dispute resolution process? Is it a simple a paragraph (or two) about legal rights to litigate or arbitrate?**
 2. **What stands in the way of you embracing the role of neutral facilitator? You have the negotiation skills, so is it just your mindset?**
 3. **How will you use your "mediation muscle" with your own organization to help them see their part in the problem or issue?**
-

Chapter 10 The End: Contract Closeout, Lessons Learned, Termination and Exit Management



The goal of properly closing out a contract is to formally end the Agency's obligations to the vendor and the vendor's obligations to the Agency.



The key to your success is to maintain the items in the checklist below to make it easier to close the contract at the end.

How do you know when the contract is at an end? What does complete look like? Most of the Agency's vendors will deliver the contracted value to the Agency. The end user will verify that the good was delivered and the service performed as contracted. In those circumstances, the Contract Manager will simply close the contract and document any lessons learned.

Occasionally, the vendor will not perform —no matter what the Agency does to work with the vendor to cure the deficiencies. In those circumstances, the Agency may have no other choice but to terminate the contract. The decision to terminate is complicated by the Agency's options for termination. And, in even rarer circumstances, the Agency will have to carefully plan for the vendor's exit from Agency work.



The contract life cycle is nearly complete and at the same time ready to start up again. As the Contract Manager closes a contract upon completion, the Contract Manager should keep in mind lessons learned while managing the contract in the event that the Agency reissues a solicitation to have a vendor perform work in a new cycle of contracting.

CM 201 and CM 301 Contract Close Out

Contract closeout is an administrative function. Please check with your Agency's policies and procedures when closing a contract. For the purposes of this manual, the Contract Manager will look at a range of possible duties associated with contract close out.

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Three Purposes

1. Formally end the Agency's obligations to the vendor and the vendor's obligations to the Agency. Without the formal closure procedure, it is possible for one party to continue its contractual obligations to the other to continue beyond the parties' intentions. For example, a software provider could renew a license the Agency no longer wishes to use. Or, the Agency could pay the software provider for a license renewal for a license that is not in effect.
2. Start to track the warranty period on goods and services. Warranties on goods and services protect the Agency in the event that the good or the service is deemed defective after contract closeout.
3. Document the closure for the Agency. This is so critical for the successful functioning of the Agency that it cannot be overlooked under any circumstance. The Agency depends on the Contract Manager to properly document the contract closeout.

There are several important aspects of documenting contract closeout. Use the **CM 201 and CM 301 Contract Closeout Documentation Checklist** if your Agency does not have a checklist in place.

CM 201 and CM 301 Lessons Learned



The goal for capturing lessons-learned upon contract closeout is to avoid repetition of negative issues that arose during the contract and to discuss them with the Agency leadership and Contract Professionals for inclusion in any re-solicitation for the work.



The key to your success is to anticipate problems in future work by analyzing the vendor's performance throughout the duration of the contract, not just at the end for lessons learned.

Conducting a lessons-learned task is essentially an audit. The Contract Managers role is enhanced or limited by what is documented in the contract. Properly documenting all the appropriate terms and conditions is a much more expansive task than processing a template contract. To ensure that any future contract includes accurate requirements to better monitor and manage vendor performance, consider the lessons you learned managing this contract.

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The Contract Manager is reviewing the actions, language and deliverables associated with the contract now that the contract is at the end to determine what can be done differently in any reissuance of the solicitation for the goods/services.



Vendors who are the subject of any formal or informal “water cooler” conversations about poor performance should definitely be the subject of lessons learned.

The Agency will want to understand the root causes for poor performance to avoid it in any future contract for the same or similar services. Despite this warning, Contract Managers should consider a lessons-learned review for good performance too. It is a best practice and competency objective for all Contract Managers to jot down lessons learned throughout the life of the contract.

There are some very common issues that negatively affect a vendor’s performance. Here are some issues that the Contract Manager might face and should consider in the analysis of lessons learned.

Common issues:

- Failure to deliver the project in accordance with contract terms and conditions.
- Poor contract and/or project management.
- Lack of communication.
- Poor communication – not talking about the right things or not using facts to support assertions.
- Lack of risk management procedures or not following existing risk management procedures.
- Poorly drafted contract terms, conditions and technical/functional requirements.
- Changes in business objectives.
- Changes in the law, regulations, etc.
- Changes in the project team.
- Unforeseen affects the Agency, those it serves, other projects.
- Change in mission (such as the changes to the DSHS breakup).
- Undone or incomplete risk analysis.
- Work performed without formal contract authorization.
- Claims for payment by the vendor for work performed.
- Misunderstood standard terms and conditions.
- Missed deadlines, etc.

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- Results of meetings, such as the kick off meeting or regular performance meetings.
- Compliance with required qualifications, etc.
- Failure or lack of Agency acceptance procedures.
- Failure or lack of Agency approvals.

Use the **CM 201 Lessons Learned Checklist** before reissuing a solicitation for the same or similar work for the contract just closed. While this list is not exhaustive, it should trigger your thinking. To discover any issues worth documenting, review your contract summary. Your contract summary can also aid in developing the lessons learned while managing the contract.



CM 201 End Chapter Here

CM 301 Lesson's Learned Checklist

Use the **CM 301 Lessons Learned Checklist** before reissuing a solicitation for the same or similar work for the contract just closed. While this list is not exhaustive, it should trigger your thinking. To further discover any issues worth documenting, review your CM 301 Contract Management Plan. Your contract management plan can also aid in developing the lessons learned while managing the contract.

The Contract Manager should additionally review the risks in the contract to ensure lessons are learned and incorporated into the next round of solicitations for similar work.

Please review the Risk Monitoring Template to incorporate lessons learned in the management of risk events. If the Agency experienced loss associated with the risk event, that risk event must be documented within the Agency. That documentation must also be forwarded to the Contract Professional in the event the Agency issues a solicitation for similar work.

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CM 301 Termination



Provide Agency leadership, the Contract Professional, and the Assistant Attorney General a reasoned analysis concerning the request to terminate so Agency leadership can make a decision that best protects the Agency against vendor claims.



Your key to success is through your role as the Contract Manager to place the Agency in the best possible position in the rare event the Agency chooses to terminate a vendor relationship.

In the event that despite all of the Contract Manager's best efforts issues persist to the point that you are considering terminating the contract, please proceed cautiously and do not communicate your intentions to the vendor without the full approval of the Agency.



Termination is a complex decision that the Contract Professional, Agency Leadership and the AAG need to consider carefully. Please send all documentation to the Contract Professional so that Agency policies and procedures can be followed.

In the event that the Agency determines it must terminate a contract, the Contract Manager has some duties to prepare and analyze the issues for consideration by Agency leadership and the Contract Professional.

Terminating a contract is a serious endeavor and can create more problems than it solves. The Contract Manager should proceed carefully to protect the Agency.

There are three primary termination provisions in State contracts.

Three Primary Termination Provisions

1. Loss of funding clause that allows for termination/suspension due to a change in funding and/or non-allocation of funds.
2. Termination for cause, default, breach, etc.
3. Termination for convenience or cancellation.

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1. Loss of Funding Clause

Generally, the Washington State Constitution Article 8, Section 4, and state law ([RCW 43.88.130](#) and [43.88.290](#)) prohibit expenditures or commitments of state funds in the absence of an appropriation of such funds by the legislature. What that means is that any Agency contract funded by state appropriations can't be performed by the Agency without an appropriation. So, in the unlikely event that the legislature does not adopt a budget by the end of the State's fiscal biennium, Agencies need to have in place plans to mitigate and/or suspend the Agency's financial liability regarding existing contracts.²⁶

Therefore, all state Agencies need to be prepared for the possibility that the legislature may fail to timely adopt a budget providing appropriations of funds to Agencies to support the Agency's contract obligations.

Agencies should include a loss of funding clause in each contract that allows for termination/suspension due to a change in funding and/or non-allocation of funds. This clause should also reserve to the Agency the right to cancel the termination if the funding is restored (e.g., the legislature ultimately adopts a budget authorizing funding for the Agency).

Further, an Agency may not want to be forced to terminate a contract if they are waiting for the legislature to adopt a budget, which will provide funding for the contract, since termination would then require the Agency to go through a new procurement (solicitation) to engage a vendor for the goods and services after a budget is ultimately adopted. So, if an Agency wishes to have the contract continue after funds are appropriated rather than terminating the contract, the Agency may prefer to seek to suspend the contract rather than terminating it.

To maintain the option to suspend, rather than terminate, the "change in funding" clause will need to specifically address the Agency's right to suspend. Some contract suspension clauses permit the Agency to suspend the contract at its sole discretion. Other suspension clauses require agreement from the contractor to the suspension.

In either event, the suspension allows the parties to resume performance once a budget is passed. If there are deliverable dates that are impacted, the parties should negotiate reasonable extensions to those dates once the contract resumes. If a contractor is not amenable to the suspension, the Contracting Professional would need to proceed under

²⁶ The legislature came close to failing to adopt a budget by the end of the State's fiscal biennium (e.g., July 1 of odd numbered years) in 2013, 2015 and 2017.

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a termination clause, making the vendor aware that they will not be guaranteed a contract once a budget is passed and that the Agency will need to re-procure the services/goods if the termination is not timely cancelled.

Finally, since similar failure of funding issues may arise in relation to Agency contracts that rely on federal funding or state funding that is not subject to an appropriation, we encourage agencies to include a loss of funding clause in all Agency contracts, not only those that are explicitly reliant on the appropriation of state funds by the state legislature.

2 & 3 Termination for cause, default, breach, etc. and Termination for convenience or cancellation.

Now, let's turn our attention to termination for cause and termination for convenience. Each of these two provisions has its own sub-provisions and intricacies.



Terminating a contract for cause should only be used after all efforts are made to solve the problems in the relationship using the methods outlined in Chapter 9.

Because people do not document efforts to resolve issues, the fallback position is to terminate the contract for the Agency's convenience. But, that form of termination may not provide the Agency the best solution. Terminating a contract for cause may give the Agency additional rights than termination for convenience.

To understand the termination provisions, let's look at an example.

Disclaimer! This is simply one template to use as an example. Your Agency might have termination language that differs from this template. It will be up to you to follow the process outlined below while applying the process to the actual language in the contract you might terminate.

Contract Termination

This form of termination requires "documented deficiencies."

1. Termination for Default

1.1. If either Buyer or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within *[thirty (30) calendar days or other appropriate time period]* or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Buyer reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Buyer to terminate the Contract.

1. Give notice of the failure
2. Correction time period – coordinate the corrective actions to ensure that the plan is workable.
3. If not corrected, then the contract can be terminated immediately, with notice.
4. The aggrieved party triggers this termination.
5. Buyer
 - a. Reserves a right to suspend
 - b. Withhold payments
 - c. Prohibit vendor from incurring additional costs
 - d. During investigation of vendor compliance breach and pending corrective action Or
 - e. If Buyer terminates the contract.

1.2. In the event of termination of this Contract by Buyer, Buyer shall have the right to procure the Products and Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Products and Services and the replacement costs of such Products and Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Buyer resulting from Vendor's breach. Buyer shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Buyer for Vendor's default.

1. If Buyer terminates the contract, Buyer shall have the right to procure substitute goods/services and
2. Vendor shall be liable for damages
 - a. Cost difference between original contract and replacement goods/services
 - b. Administrative costs directly related to the replacement of goods/services
 - c. Any other costs
3. Buyer shall have the right to deduct from money due vendor or to be due to the vendor

Contract Termination cont.

This provision is critical because the rights for a Termination of Convenience are different.

1.3 If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.

This provision prevents the aggrieved party from creating the default and then making a claim against the other party.

1.4 This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

2. Termination for Convenience

This provision allows the Buyer to terminate for a business reason.

2.1 When, at the sole discretion of Buyer, it is in the best interest of the Buyer, Contracting Officer may terminate this Contract, in whole or in part, by *[fourteen (14) calendar days or other appropriate time period]* written notice to Vendor. If this Contract is so terminated, Buyer is liable only for payments required by the terms of this Contract prior to the effective date of termination.

The Buyer may terminate for a business reason with written notice. The Buyer shall pay Vendor for amounts due under the contract for goods/services received and accepted by the Buyer prior to the date of termination.

Contract Termination cont.

This provision outlines additional duties the Vendor owes to the Buyer upon any form of termination.

3. Termination Procedure

- 3.1. In addition to the procedures set forth below, if Buyer terminates this Contract, Vendor shall follow any procedures Buyer specifies in Purchaser's Notice of Termination.
- 3.2. Upon termination of this Contract, Buyer, in addition to any other rights provided in this Contract, may require Vendor to deliver to Buyer any property, Products, or Work Products specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 3.3. Unless otherwise provided herein, Buyer shall pay to Vendor the agreed-upon price, if separately stated, for the Products or Services received and Accepted by Buyer, provided that in no event shall Buyer pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. Buyer may withhold from any amounts due Vendor such sum as Buyer determines to be necessary to protect Buyer from potential loss or liability.
- 3.4. Vendor shall pay amounts due Buyer as the result of termination within thirty (30) calendar days of notice of amounts due. If Vendor fails to make timely payment, Buyer may charge interest on the amounts due at one percent (1%) per month until paid in full.

This provision obligates the Buyer in the notice of termination to outline the Vendor's duties upon termination.

This provision allows the Buyer to obligate the Vendor to deliver property, Products, or Work Products specifically produced or acquired for this contract.

This provision is complicated as it has to do with the contracted price and the provisions associated with the price. The important part of this provision is that the Buyer is limited to paying the Vendor the maximum of the agreed upon contract price upon termination.

This provision outlines the payment terms upon termination.

When anyone in the Agency, whether it is a stakeholder, Contract Professional or end user, suggests that a contract be terminated, please use the **CM 301 Termination Checklist**. Take the time to answer these questions in full before suggesting terminating the contract with any internal stakeholder or Contract Professional.



Stop here. Collect documents, write up the answers to these questions and set up a meeting with the Contract Professional, and if appropriate Agency leadership and the AAG.

Your answers will influence Agency leadership and Contract Professional's decision regarding terminating the contract. Your answers and associated documentation is incredibly useful to the stakeholders. And, upon termination will become part of the communication plan to the stakeholders.

Furthermore, in the event the vendor initiates a legal claim (lawsuit) against the Agency, your documentation will be critical to assessing the merits of the vendor's claim and the merits of the Agency's basis for terminating the relationship. Use your professional judgement to include a reasonable basis clearly linked to the contract terms when communicating regarding any potential termination.

Use the CM 301 Termination Checklist to help you analyze the issues surrounding terminating a vendor relationship.



CM 301 End Chapter Here

CM 401 Exit Management



Provide Agency leadership a reasonable plan when exiting a highly strategic vendor relationship.



Your key to success is through your role as the Contract Professional to place the Agency in the best possible position when the Agency exits a highly strategic relationship.

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Introduction

An important facet of highly strategic relationships is a credible exit management plan. An exit management plan provides the prearranged structure for transitioning vendor work at the end of the contract term, at the beginning of a new phase of work with another vendor or the Agency, and when the Agency chooses to work with a new vendor for the same scope of work.

The goal is to exit the relationship with minimal additional cost and disruption. It is wise for Agencies to have an exit management plan developed at the initial competitive solicitation for each of its highly strategic relationships. One of the potential dangers with a highly strategic vendor relationship is that the Agency can become so entwined with and dependent on the vendor that the Agency accepts poor performance rather than soliciting a new (and hopefully performing) vendor.

An exit management plan provides the Agency the option to smoothly transition the vendor's work to the Agency. An exit management plan will facilitate a smooth, effective transition of services delivery, minimum disruption of ongoing delivery, and efficient completion of all agreement obligations. The plan is initiated upon a formal termination notice.

Termination Clauses Are Not an Exit Management Plan

Termination clauses, either for convenience or for cause, include a notice to the vendor but do not set forth the structure to unwind the business relationship. In fact, these clauses may provide incentives for the vendor to “dump and run,” stripping resources from the project long before their work is transitioned to the Agency. In such cases, services may be seriously disrupted, and end users or customers negatively affected, and costs significantly increased.

Best Practice—Develop the Plan During Contract Development



It is a best practice to develop an exit management plan during the pre-award phase, include it in the solicitation and contract terms.

A best practice would be to develop the exit management plan with the vendor during contract development, negotiate refinements and include the plan in the contract as an attachment or schedule. It is far easier to work through an exit management plan at the beginning of a relationship than when the parties are in heated debate and termination is imminent.

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However, the parties rarely, if ever realize they will need a formalized exit plan until all other dispute resolution efforts have failed to set the relationship on the right track again. As a result, the Contract Professional may be developing the plan in collaboration with Agency leadership and the Contract Manager. In that case, the Contract Professional would document the exit plan and facilitate the contract closeout in collaboration with the Contract Manager.

The Exit Management Plan

The components of an effective exit management plan include:

1. Termination Notice
2. Exit Transition Period
3. Exit Transition Plan
4. Exit Governance and Reporting

1. Termination or End of Term Notice

Termination notices are mandated when the Agency exits the relationship before the term. In circumstances in which the contract comes to the term and the work is completed, the Agency may choose to send the notice as outlined below, and perhaps name it “End of Term Notice.”

When terminating the relationship, follow the written termination provisions in the contract. The Agency must send a Termination Notice, and should consider sending an End of Term Notice to the vendor, which specifies:

- The people, services, or parts of the Agency impacted by the transition,
- The estimated total timeframe to transition any remaining work, deliverables or documents to the Agency, and
- The date upon which the Agency and the vendor will meet to develop the specific scope of the exit management plan.

2. Exit Transition Period

Just as there is traditionally a timeframe to ramp up services after the contract is signed, in highly strategic relationships, there is also a transition period at termination. The exit transition period generally encompasses the time from the date of the termination notice until the date when the exit is complete.

3. Exit Transition Plan

If the Agency developed a transition plan at the beginning of the contract, the exit management plan will provide a reverse snapshot of that initial implementation plan.

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The exit plan ought to be specific about the roles, duties, and expectations of both the Agency and the vendor.

The plan should include:

- Timelines for the various activities required to exit the relationship (remember to apply project management principles to the exit),
- List of the vendor's personnel responsible for managing and implementing the exit plan,
- Preparations for a transfer of knowledge regarding the work,
- Outline all items the vendor will transition to the Agency such as, manuals, documentation, drawings, and anything that enables a software system to fully transfer to the Agency,
- Plan for continuity of vendor's services during the transition period including a list of the vendor's support personnel,
- Communication plans for all impacted stakeholders during the exit process,
- Process for the vendor to fully answer all reasonable questions about the items being transferred,
- Identification of all security and disaster recovery tasks the vendor undertook during the duration of the contract,
- Inventories of all licenses, permits, and other agreements (sub-contracts) that require notification, assignment, or transfer of rights, and
- Lists of confidential information and whether it needs to be retained, returned or destroyed in compliance with the state's record retention and public disclosure laws.

4. Governance and Reporting

The exit process will inevitably involve questions and concerns. The resolution of any issues arising from the exit transition should be managed within the existing governance structure (if there is one in place). If there is not a governance structure in place, please consider documenting one.

The exit transition plan should identify the vendor's reporting requirements to the Agency.

Reports may include:

- The progress of the transition,
- The destruction or retention of confidential information,
- The remaining work to be done to complete the vendor's exit from the relationship,

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- Identify key issues impacting the timing of the exit plan,
- Identify potential risks while implementing the exit plan, or
- Detail of key actions that need to be taken by the various stakeholders to facilitate a smooth transition.

Coaching Questions



1. Did you develop a high-level contract summary? Did it provide you with enough information to monitor the relationship?
 2. What lessons did you learn while monitoring the contract?
 3. What would you do differently and why?
-



1. When is the last time you read all the termination language your Agency uses in its template agreements? Would you benefit from rereading it now?
 2. If you had to analyze a possible termination scenario, what would you need to know that after reading this chapter you don't know?
-



1. Which relationships would benefit from an exit management plan?
 2. How would you go about facilitating that planning process with the Contract Manager?
 3. What part of that plan ought to be formally documented in a contract?
-

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Notes:

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Appendix A: List of Resources (*as of February 2018)

RCW

- [RCW 28B.10.016](#)
- [RCW 28B.10.029](#)
- [RCW 39.26.005](#)
- [RCW 39.26.010](#) (1)
- [RCW 39.26.010](#)(15)
- [RCW 39.26.010](#)(16)
- [RCW 39.26.080](#)
- [RCW 39.26.090](#)
- [RCW 39.26.110](#)
- [RCW 39.26.120](#)
- [RCW 39.26.125](#)
- [RCW 39.26.140](#)
- [RCW 39.26.180](#)(3)
- [RCW 42.56](#)
- [RCW 43.105.020](#)

Other

- United States Federal Acquisition Regulation (FAR) Part **48.101**
- State Administrative and Accounting Manual [SAAM Manual](#)
- [DES Policies](#)
- [Starting an IT Project](#)
- OneWa Definition w-diversity Final 7-19-17

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Appendix B: List of Course Tools

CM 102

- CM 102 Stakeholder Matrix
- CM 102 Stakeholder Analysis

CM 201

- CM 201 CM 301 Contract Closeout Checklist
- CM 201 CM 301 An Informal Process to Resolving Disputes
- CM 201 CM 301 Kickoff Meeting Checklist
- CM 201 CM 301 CM 401 Risk Monitoring Template
- CM 201 Contract Summary Checklist Goods
- CM 201 Contract Summary Checklist Services
- CM 201 Lessons Learned Checklist
- CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Goods
- CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service

CM 301

- CM 201 CM 301 Contract Closeout Checklist
- CM 201 CM 301 An Informal Process to Resolving Disputes
- CM 201 CM 301 Kickoff Meeting Checklist
- CM 301 Change Management Checklist
- CM 201 CM 301 CM 401 Risk Monitoring Template
- CM 301 Contract Management Checklist
- CM 301 Contract Termination Checklist
- CM 301 Contract Termination Language
- CM 301 Lessons Learned Checklist
- CM 301 Requirements Checklist Hybrid
- CM 301 When Issues Persist Checklist

CM 401

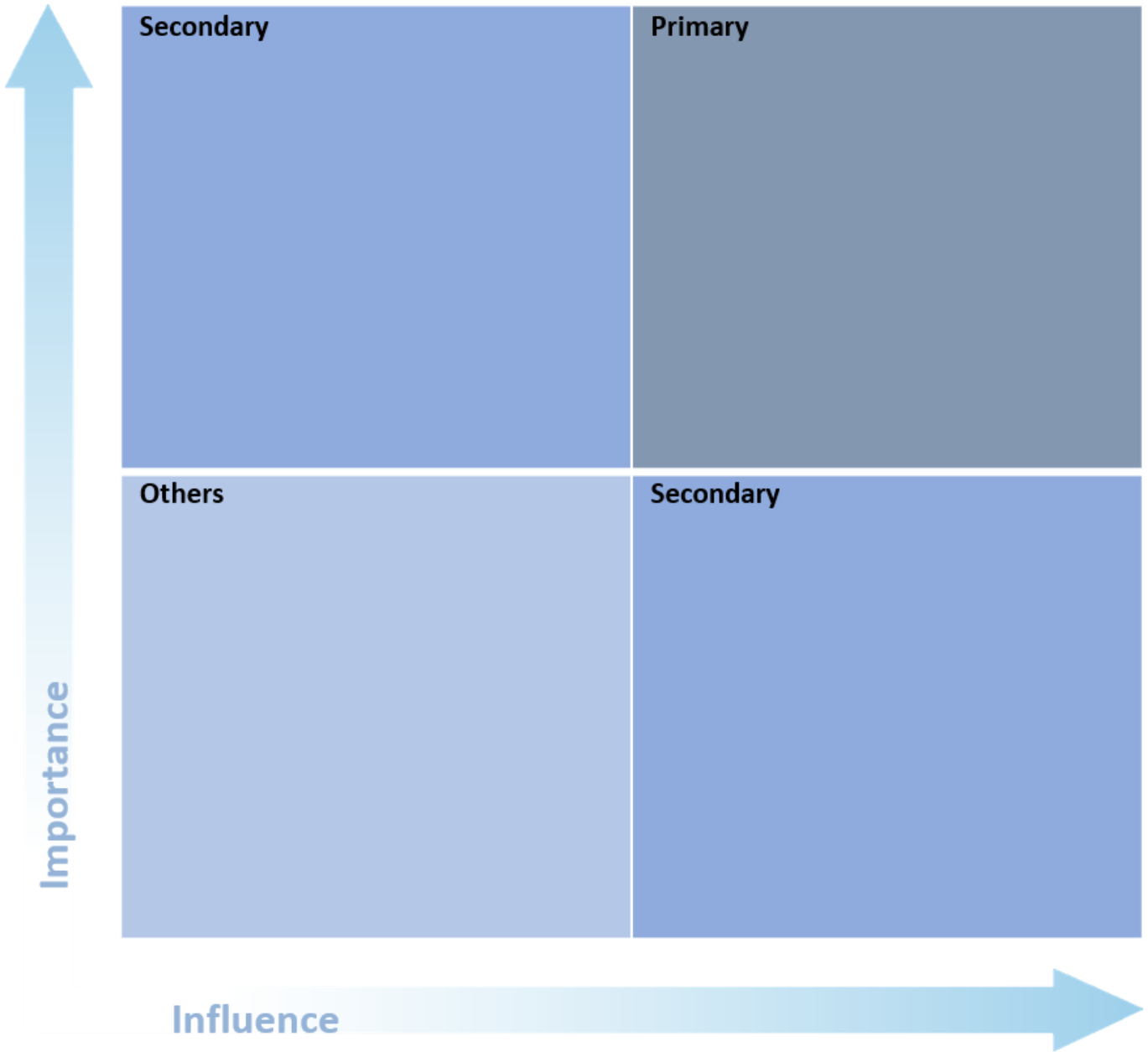
- CM 201 CM 301 CM 401 Risk Monitoring Template
- CM 401 Bidder Issues List
- CM 401 Approach to Negotiating Redlines
- CM 401 Sample Governance Contract Terms
- CM 401 Exit Management Plan Checklist
- CM 401 Strategic Relationship Requirements Tool
- CM 401 Transition Plan Checklist
- CM 401 Negotiation-Action Tracking Spreadsheet
- CM 401 Negotiation-Action Tracking Spreadsheet

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CM 102

- CM 102 Stakeholder Matrix
- CM 102 Stakeholder Analysis

Stakeholder Matrix



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CM 201 Tools

- CM 201 CM 301 Contract Closeout Checklist
- CM 201 CM 301 An Informal Process to Resolving Disputes
- CM 201 CM 301 Kickoff Meeting Checklist
- CM 201 CM 301 CM 401 Risk Monitoring Template
- CM 201 Contract Summary Checklist Goods
- CM 201 Contract Summary Checklist Services
- CM 201 Lessons Learned Checklist
- CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Goods
- CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service



CM 201 and CM 301 Contract Closeout Checklist

Use this checklist to close out the contract with the vendor.

Instructions

These lists are not exhaustive; these questions are just the beginning. These questions will help your Agency conform to policy and laws. Please consult your Agency's policies and all state and federal laws. In your own daily work, start with this list and build on it.

Document Retention (Check your Agency's policies and laws)

- Have you collected all contract documents into one file location?
 - Original Contract
 - Amendments, schedules, modifications
 - Notices of any kind
 - Corrective action plans
 - Warranty documents for goods
- Deliverables
 - From the vendor to the Agency
 - Invoices, shipping receipts, reports, spreadsheets, drawings, etc.
 - Manuals, instruction documents etc.
 - From the Agency to the vendor
 - Formal acceptance notices, if any
- Relevant communications
 - Memos (even if contained in an email)
 - Emails that contain follow up accountability (duties, tasks, deadlines)
- Confidential Information
 - Check the contract for the terms for the receiving party to retain, return, or destroy confidential information.
 - If the vendor has Agency confidential information send the vendor a notice to return or destroy that information per Agency policies.

Delivery of all Contract Goods/Services

- Verify with the end user that all goods and services are completely delivered to the Agency. Do not close a contract with anything still outstanding.

Invoice Audit

- Has the vendor submitted all invoices?
- Has your Agency approved all the invoices?
- Have you tracked the invoices against the budget for this contract?



CM 201 and CM 301 Contract Closeout Checklist

- Have you completed any other applicable Agency financial procedures?

Return of Service Items

- Has the vendor returned all service items (such as badges, computers, removable drives, or cleared out desks etc.)?
- Has the Agency returned all service items to the vendor (such as computers, tablets, removable drives, etc.)?



CM 201 and CM 301

An Informal Process to Resolving Disputes

Once you see an issue, follow these steps.

Step 1 – Gather information from all sides of the dispute

Talk to people from the vendor's organization as well as people in your Agency. Only in that way can you weigh all the information to get a fuller picture of the root cause of the problem. Ask open-ended questions to get the issue fully defined and understood by all the parties.

Step 2 – Create a safe meeting to talk about things

Create a safe setting in a meeting to talk about the problem and brainstorm a solution. A safe meeting means the parties cannot blame one another or show any anger. It's your role to calm people to ensure that all parts of the problem are revealed, not just the parts that make your Agency look good and the vendor's organization look bad.

Step 3 – Build your bridge to resolution through shared interests

Build common ground in the meeting. You will literally use words such as, *"we all can agree that . . . is important to both organizations."* You may say something to this effect so often you'll feel like a broken record but it is the best way to move people towards a workable solution.

Step 4 – Validate that the solution will functionally work

Before the parties can implement the solutions you are discussing, stop to validate that all your stakeholders and the vendor's stakeholders can meet any newly agreed upon solution. This is an important step in the process. Too often, executives without enough functional knowledge make agreements that their organizations are literally not set up to perform. Since it is your role to ensure compliance to the new requirements, validate performance before any formal changes begin.

Step 5 – Document, document, document

The final step is to summarize the resolution in some written form. In very informal settings, the parties may document the issue, the solution and the target date for resolution in a memo attached to an email. Be sure to circulate the memo to all agency and vendor stakeholders. Other more complex circumstances will require a contract modification, change order, or amendment. In that circumstance, the Contract Manager will involve the Contract Professional.

Kick-off Meeting Checklist

CM 101 discusses the need to have a kick-off meeting as part of contract management. But, there is one very important aspect of these kick-off meetings that is usually overlooked—aligning your understandings with the vendor’s understandings.

Instructions

1. If you feel that a meeting with the vendor is necessary, please consider these questions in advance of any meeting with the vendor.
2. Choose the right type of meeting (in person or call).
3. In more complex service contracts, you may choose to include the vendor’s personnel, such as the people delivering the day-to-day services.

Aligning with a Vendor

- What obligations does the vendor agree they have to perform? (Please don’t assume the vendor has read the Statement of Work or the final contract.)
- What roles at the vendor’s business (and individuals in those roles) will accomplish those obligations?
- What skills or functional background do those individuals have?
- What are the levels of authority?
 - Should you tell the man who comes to wax the floors to remember to wax the hallway or should you talk to the owner?
 - Should you tell the vendor’s president that a test failed to meet expectations or the lead software architect? Or, both?
- What tools or systems will they be using to coordinate multiple internal team members?
- What tools do they want to use to communicate with the Agency? (Calls, email, meetings, meeting notes)
- What Agency obligations are they relying on? (Approvals, scheduling meetings etc.)
 - Do you agree with those obligations?
- From the vendor’s perspective, does the Agency have implied (unstated) obligations to the vendor? (If so, clear those up at this meeting.)

The **Contract Summary** and the results of the kick-off meeting will dictate your over-arching contract and relationship management strategy.

Risk Monitoring Template

List of Risk Questions

From the CM 301 Requirements Checklist—Hybrid Purchase

- Is the vendor providing goods/services directly to the community on behalf of the agency?
- Are there agency policy, regulatory and/or statutory requirements affecting risk?
- Any required qualifications of the vendor and/or their staff?
- Timeline for delivery create risk?
- Inspections or testing to accept the goods?
- Are quality assurance audits needed?
- Is the vendor providing a service that could injure people or property (for example, welding)?

Agency-Vendor Interdependency

Map out the dependencies

- What is the vendor depending on to do its work?
- Who is the vendor going to depend on to receive information, data, approvals, etc.?
- What is the Agency depending on? (Data, reports, samples, draft versions, etc.)
- Who is the Agency going to depend on? (from this vendor or another vendor)
- Who will test, inspect or accept work? (In other words, does someone need to travel to your location for the Agency to test a system?)
- Who within the Agency will approve work and is that the same person who will formally accept the work according to the performance criteria?
- What are the time frames associated with these dependencies?
- What are the potential barriers to receiving adequate information, data or approvals associated with the dependency?

Statement of Work

- Transition Planning Schedule.
 - This is a schedule to transition work from one party to another. It is not the same as vendor milestone dates, which is vendor specific. This schedule will include anticipated dates the Agency or possibly another vendor will transition its work to the vendor.
 - This language would outline the Agency criteria for approving of the transition of work from the vendor to the State or from one vendor to another vendor.
- Milestone Dates. There are different categories for
 - Vendor delivery,

- Agency approval/acceptance,
- CM invoice submittals and payments.
- Vendor Representative Named as Project Manager. Some vendors prefer a title to a named individual.
- Acceptance Criteria.
 - Note the circular nature of template contracts. Templates will refer back to the scope of work, technical specifications, vendor's response, or applicable standards.
 - Be sure that formal acceptance or applicable industry standards are included in the scope of work or technical specifications. These mechanisms act as a control.
- Reports and Reporting Timeline. The vendor will need to demonstrate its compliance with transitions in the form of a report of some kind. And, how often does the Agency wish to receive these reports. Consider tying them to the acceptance criteria.
- Performance criteria.
 - Is the transition happening all at once or over a period of time? If over a period of time, consider a metric (90% complete by a date) or a Service Level Agreement (90% on-time delivery by a date).

Financial Risks

- Compliance
 - Ensuring the vendor complies with laws and regulations regarding federal funding (or other sources of funding)
 - Ensuring the vendor is appropriately insured and complies with insurance reporting requirements
 - Ensuring that sub-contractors working for the vendor comply with laws, regulations and policies
- Small businesses
 - Insufficient cash flow to complete services or deliver goods
 - Insufficient cash flow to pay sub-contractors or employees
 - Insufficient (or lapsed) insurance coverage
- Insufficient insurance for:
 - Goods or services provided to the community on behalf of the Agency
 - Complex services that pose a potential risk to the Agency (such as complex Information Technology work)
 - Vendor employees who work on-site at the Agency
- Wrong type of insurance for the list noted above
- Does the Agency require proof of insurance for the duration of the contract term?

- Bankruptcy, Insolvency, Receivership
- Vendor mergers/acquisitions with other businesses
- Insufficient auditing of invoices against contract payment terms
- Lack of auditing the vendor's records when an issue arises
- Insufficient or non-existent recording keeping for an audit process

Hybrid Contract Risks

- Is the vendor providing goods/services directly to the agency or providing goods/services to the community on behalf of the agency?
- Is the vendor buying goods for the Agency from another vendor (original equipment manufacturer)? If yes,
 - Is the vendor passing through warranties from the manufacturer?
 - Is the vendor purchasing from a distributor?
 - Or, is the vendor using their own warranty provision to warrant the materials?
- What are the Agency's obligations to the vendor (technical drawings, approvals, etc.). List those agency's requirements.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the good need to meet a regulatory or policy obligation? List them.
- If the Agency is providing any goods/equipment for this Statement of Work, how does the Agency stay within the provisions of the original equipment manufacturer warranty for those goods/equipment as the vendor accesses the items with the good/service the vendor provides?
- List any required qualifications for the good, such as meeting OCIO standards?
- Does the good have its own software of any kind at all? If so, how does this software code impact any existing software code the Agency is using?
- List any required qualifications required of the vendor and/or their staff to perform the services?
- Which one is dependent on the other? Does the good arrive first or does the service start first?
- Is the timeline for performance/delivery etc. clearly outlined?
 - Are there gaps in the delivery dates or "TBD's"?
 - Who, when and how will the "TBD's" be determined?

Intellectual Property Risks

- How robust is your Agency's oversight of vendor's who have access to
 - Sensitive Agency data,

- Community or citizen's data, or
 - Access to agency networks?
 - How will you personally monitor data breaches, security breaches etc.? If it is not your duty, then whose duty is it?
- How recently have your Agency's cyber-security policies been updated? Are those updates in the current contract template that will be attached to the solicitation?
- Does this project require background checks on the vendor's employees?
- Check your work: How will these risks be incorporated into the Statement of Work and contract terms?

Software Need Checklist

- What exactly—in layperson's terms—does the agency need from the vendor? Don't worry about talking in legal terms for now, just make sure you list things like:
 - Does the agency need to make adjustments to the code over time?
 - Does the agency need to get the code to work with new items that agency might purchase, such as new elements in a security system in the near future?
 - Does the agency need to include the custom software into an existing network?
 - Does the agency need the ability for other vendors to access this custom code over time?
 - In terms of use of or ownership of the code, the Contract Professional and legal staff will align the template terms with what the business needs.
- How long does the vendor intend to service the software (i.e. upgrades)?
- How long does the Agency project using the software and updates? (months, years, decades)

When accessing, modifying or creating drivers for older software consider the following:

- Will the vendor need access to another vendor's software at the Agency for their work?
- Does the Agency have that right to access the software?
- Can this vendor legally help the Agency get that access?
- What is the solution if the Agency does not have the right to access the software? (Note, older contracts were not well written to anticipate the issues.)



Instructions

1. If you wrote the Statement of Work (SOW), your first task will be to verify that the SOW in the contract reflects your intentions and that nothing has changed. If you did not write the SOW, read it now.
2. Familiarize yourself with the contract terms and conditions (they are frequently updated).
3. Write the summary. Your contract summary will be helpful when answering *general* inquiries from internal stakeholders and the vendor. When writing the summary, *extract the information in the checklist below from the contract* (not your internal documentation).
4. Call the Contract Professional for advice in interpreting any terms or conditions.

Monitoring Performance

For the purchase of goods, answer these questions:

- What is the vendor delivering?
- What are the parties' responsibilities to each other?
 - List the payment terms and any other things the State might be obligated to do.
 - List the vendor's final delivery (or other obligations to the Agency).
- How is the vendor supposed to deliver the goods?
- When is the vendor supposed to deliver the goods?
- What are the State's options if the vendor does not deliver the goods? (Look at the contract terms and conditions for these options.)
 - What is an acceptable fallback position if something does not go according to plan?
 - What if the goods are delivered "defective?"

Frequency of Monitoring

Next you will determine how often to monitor the requirements. To determine frequency, you will need to understand your Agency's policies, goals, and overall mission to the community.

- Are goods delivered directly to the community? How frequently should you verify that the goods are delivered? (weekly, monthly, quarterly, annually?)
- Is a vulnerable or disadvantaged community being served? (The community's status increases the severity of loss to the risk of late or non-delivery. Please seek advice on how often to verify delivery and place this risk in the Risk Monitoring Template and follow the instructions in the spreadsheet.)
- How is delivery (or other types of performance) being measured, if at all?
 - Think of things like: complete delivery and partial delivery, etc.
- If there is a unit of measurement, answer these questions:



CM 201 Contract Summary Checklist Goods

- Who will record the data about this unit of measurement?
- How often will the recording party collect the data?
- In what form will the recording party report the data?
- How will the receiving party validate that the data is accurate?
- Who will review that data?
- Who at the Agency will approve of the data?
- Do the goods require licenses, certifications, safety inspections before delivery?
- Is the vendor required to maintain insurance, license, professional designations etc. in the manufacturing or delivery of the goods?
- Could the vendor's performance failure result in damage to property or injury to person? (If yes, please add this to the Risk Monitoring Template and follow the instructions in the spreadsheet.)

Invoicing and Payment Checklist

- How is the payment calculated?
 - Fixed Price or Lump Sum
 - Fee for Service
 - Cost Reimbursement
 - Time and Materials
- Payments:
 - For units delivered (quantity)
 - All at once or over a time period (Per item, per shipment, at full shipment)
- How often can the vendor invoice? (Note: this is critical to ensure that the vendor does not overcharge the State.)
- Does the invoice match the contracted price and method of calculation? (Prices can change over time, but in a fixed price, fee for service or lump sum agreement, the vendor agrees not to increase the price.)
- Are all the shipping charges correct and according to the shipping terms?
- Are there taxes or duties to account for?
- Are there any surcharges (late fees, fuel charges, etc.)? Are they outlined in the contract, and is the vendor permitted to charge for them?
- Is it your responsibility to track the vendor's payments against the budget for the category of goods? Do you have what you need to track these payments?

This list is far from exhaustive; it does however, point to some factors that could require more than annual monitoring of the vendor's performance. Please use professional judgment and check agency policies when determining the frequency with which to monitor the vendor's performance.



Instructions

5. If you wrote the Statement of Work (SOW), your first task will be to verify that the SOW in the contract reflects your intentions and that nothing has changed. If you did not write the SOW, read it now.
6. Familiarize yourself with the contract terms and conditions (they are frequently updated).
7. Write the summary. Your contract summary will be helpful when answering *general* inquiries from internal stakeholders and the vendor. When writing the summary, *extract the information in the checklist below from the contract* (not your internal documentation).
8. Call the Contract Professional for advice in interpreting any terms or conditions you are unfamiliar with.

Monitoring Performance

For the purchase of services, answer these questions:

- What service is the vendor performing?
- What are the parties' responsibilities to each other?
 - List the payment terms and any other things the State might be obligated to do.
 - List the vendor's final service delivery whether a one-time performance of the service or a periodic performance of the service (or other obligations to the Agency).
- How is the vendor supposed to deliver the service?
- When is the vendor supposed to deliver the service?
- What are the State's options if the vendor does not perform the service? (Look at the contract terms and conditions for these options.)
 - What is an acceptable fallback position if something does not go according to plan?
 - What if the services do not meet expectations ("non-conforming")?

Frequency of Monitoring

Next you will determine how often to monitor the requirements. To determine frequency, you will need to understand your Agency's policies, goals and overall mission to the community.

- Are services delivered directly to the community? How frequently should you verify that the goods are delivered? (weekly, monthly, quarterly, annually?)
- Is a vulnerable or disadvantaged community being served? (The community's status increases the severity of loss to the risk of late or non-delivery. Please seek advice on how often to verify services and place this risk in the Risk Monitoring Template and follow the instructions in the spreadsheet.)



- How is service performance being measured, if at all? (number of visits, number of people served)
- If there is a unit of measurement, answer these questions:
 - Who will record the data about this unit of measurement?
 - How often will the recording party collect the data?
 - In what form will the recording party report the data?
 - How will the receiving party validate that the data is accurate?
 - Who will review that data?
 - Who at the Agency will approve of the data?
- Does the service require licenses, certifications, safety inspections before performance?
- Is the vendor required to maintain insurance, license, professional designations etc. in the performance of the service?
- Could the vendor's performance failure result in damage to property or injury to person? (If yes, please talk to your Agency leaders and Contract Professional to monitor that risk.)

Invoicing and Payment Checklist

- How is the payment calculated?
 - Fixed Price or Lump Sum
 - Fee for Service
 - Cost Reimbursement
 - Time and Materials
- Payments:
 - For units delivered (quantity)
 - All at once or over a time period (Per item, per shipment, at full shipment)
- How often can the vendor invoice? (Note: this is critical to ensure that the vendor does not overcharge the State.)
- Does the invoice match the contracted price and method of calculation? (Prices can change over time, but in a fixed price, fee for service or lump sum agreement, the vendor agrees not to increase the price.)
- Is it your responsibility to track the vendor's payments against the budget for the category of goods? Do you have what you need to track these payments?

This list is far from exhaustive; it does however, point to some factors that could require more than annual monitoring of the vendor's performance. Please use professional judgment and check agency policies when determining the frequency with which to monitor the vendor's performance.



CM 201 Lessons Learned Checklist

Use this checklist to outline lessons learned from the contract and vendor's performance that could influence a re-solicitation.

Instructions

1. These lists are not exhaustive; so, in your own daily work, start with this list and build on it.
2. These questions will inform any future solicitation of the work, and eventually any future Statement of Work.
3. These questions may also help you identify risks and associated losses to address in future solicitations.
4. Your CM 201 Contract Summary Checklist and the answers can also aid in developing the lessons learned.
5. For the simplest purchases of goods or services, answer these questions. For more complex contracts, please use the CM 301 Lessons Learned Checklist.

Goods/Services

- Did the vendor experience problems delivering (goods/services)?
 - What were the problems?
 - Why did those problems exist?
 - Was any part of the problem attributable to the Agency (delayed approvals)?
- Did the Agency exercise any options for lack of vendor performance (Cure Notice or Corrective Action Plan)?
- Did the agency measure performance?
 - Goods: think of things like define complete delivery, partial delivery, "defective goods," etc.
 - Services: think of things like number of visits, number of people served, software functions for a time period without failing, reports delivered, etc.
- Did the measurements help avoid performance issues?
 - If not, what would have worked to avoid performance issues?

Invoicing and Payment

- Did the vendor invoice according to the contract provisions?
- Did the invoices match the contracted price and method of calculation?



CM 201 Lessons Learned Checklist

Additional Factors

If the vendor's failure to perform could have resulted in damage to property or injury to person:

- Were there issues delivering goods or services directly to the community?
- Did the vendor provide the required licenses, certifications, safety inspections before delivery, etc.?
- Did the vendor maintain required insurance, licenses, professional designations etc. in the delivery of goods or services?

If the Agency is considering re-issuing a solicitation for the work:

- List any changes to the requirements here.
- List any changes to the contract terms and conditions that would ensure appropriate vendor performance.
- Provide the answers to all of these questions to your Agency's Contract Professional for review before the issuance of any solicitation for the work.



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of Goods

Use this checklist to define the functional and technical requirements for the purchase of goods.

Instructions

6. These lists are not exhaustive; these questions are just the beginning of your conversation with the stakeholders. So, in your own daily work, start with this list and build on it.
7. These questions will inform the Statement of Work and some of the legal provisions in the final contract. The Contract Professional will work with you to align these requirements and the contract terms and conditions.
8. These questions may also help you identify risks and associated losses. Please see below for instructions on the inclusion of your answers in the Risk Monitoring Template.
9. These questions and answers will also help form your Contract Summary.
10. For services, see the Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service.

Business Objectives (Why do the work)

- What is causing the need, problem, challenge or issue?
- What is the vendor doing to meet this need, problem or challenge?
- Is the vendor providing goods directly to the Agency or providing goods to the community on behalf of the Agency?
- What outcome is the Agency looking for from this vendor?
 - Deliver _____ to _____ on time for proper maintenance of _____.
 - Write your statement here.
- Summarize here:* What is the purpose of the contract? (This will be used in any solicitation for a competitive bid/quote)

Developing the Work (What is the work)

- List the specific goods the vendor will provide to satisfy the need, problem or challenge?
- How does the good function? (Note, these are your technical and functional requirements.)
 - Goods: size, shape, dimensions, weight, etc.



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of Goods

- What are the Agency's obligations to the vendor (access to a building, computer system, technical drawings, etc.)? List those Agency requirements so the Contract Professional can determine how to include them in the contract.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the good need to meet a regulatory or policy obligation? List them.
- List any required qualifications required of the vendor and/or their staff to manufacture the good?
- Check your work:* Are the functional and technical requirements clearly written in a form that the vendor and the Contract Manager both understand?
 - Use simple sentences, verbs, industry terms, and industry standards.
 - Are there *implied* requirements (such as one party providing the other party data or drawings or access to a system) that are not outlined so far? List them.

Describing Performance (How and when is the work done to specifications)

- When do the goods need to be delivered?
- Is the timeline for performance/delivery etc. clearly outlined?
 - Are there gaps in the delivery dates or "TBDs"?
 - Who, when and how will the "TBDs" be determined?
- What documents/reports will the Agency need to verify delivery of goods?
- What other objective factors will the Agency use to verify the work?
 - Think of things like: number of units delivered, no broken parts, units delivered on time etc.
- List the unit of measurement here: _____ . If there is no unit of measurement, skip the next checkbox below.
- If there is a unit of measurement, answer these questions:
 - Who will record the data about this unit of measurement?
 - How often will the recording party collect the data?
 - In what form will the recording party report the data?
 - How will the receiving party validate that the data is accurate?
 - Who will review that data?
 - Who at the Agency will approve of the data?
- What should happen if the good does not meet the requirements? (Note, these will be incorporated into the contract terms and conditions.)



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of Goods

- Define complete delivery, partial delivery, “defective goods”, etc.
- Will the vendor have the right, time and ability to “cure” or fix the good? How will that work? What is the time frame? Who would be negatively impacted if the goods are defective?
- Will the vendor replace the good or item? What is that process? Who will pay for shipping the defective item back to the vendor and shipping the replacement item to the Agency? Does the item need to be new or the refurbished version of the defective item originally delivered?
- ❑ *Check your work:* Are the performance requirements clearly written so the Contract Manager can demonstrate performance or demonstrate the lack of performance when talking to the vendor about its performance?

Acceptance (What happens if the goods don’t meet expectations)

The contract template will have generic acceptance language, and usually refers back to the scope of work or technical specifications for acceptance criteria. This section will provide the Agency and the vendor acceptance criteria (Acceptance criteria provide guidance about how and when the work is complete. Complete can mean a part of the units are delivered or all of the units must be delivered at one time. Please see the Defined Terms in the contract for the applicable definition.)

- ❑ Who at the Agency will verify that the goods are delivered? What does that person need to verify that the goods are delivered?
- ❑ Who at the Agency will verify that the goods meet the technical and functional specifications? In other words, that the goods are the size, shape and form ordered. What does that person need to verify technical specifications for the goods?
- ❑ Are there inspections of the goods? When, by whom and at what point? The vendor at the point of shipment or the Agency at time of delivery?
- ❑ Is testing required to validate the goods perform as requested? When, by whom and how are those tests to be done?
- ❑ Does this good require quality assurance (QA) audits, or other procedures to verify or validate performance? When, by whom and how are those to be done?
- ❑ Are there additional expenses for tests or certificates of compliance etc.? Who pays for them?
- ❑ What if something is rejected and needs to be tested again? Who pays for that process?
- ❑ How do we enforce these performance requirements? (If you have any questions, please ask your Contract Professional.)



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of Goods

- Check your work:* Is the acceptance process clearly outlined so the Agency can formally accept or reject the goods? (Note, acceptance leads to payment, and rejection leads to replacement/rework).



Reassess the answers to the following questions as your answers may indicate a potential risk and associated loss to the Agency. If you are unclear at this point, please call your Contract Professional or a Subject Matter Expert.

Risk Questions

These questions (from above) may indicate a potential risk and associated loss to the Agency.

- Is the vendor providing goods directly to the community on behalf of the agency? If yes, this is a potential risk and needs to be addressed in the legal terms and conditions. Further, note this risk in the Risk Monitoring Template and follow the directions in the template.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the good need to meet a regulatory or policy obligation? If you listed any policies, regulations or statutes please work with your Agency stakeholder and Contract Professional about potential risks.
- List any required qualifications required of the vendor and/or their staff to manufacture the goods? If there are qualifications, the loss of or lack of qualifications is a potential risk and needs to be addressed in the legal terms and conditions. Further, note these qualifications as a risk in the Risk Monitoring Template and follow the directions in the template.
- Is the timeline for performance/delivery etc. clearly outlined? If a missed timeline could negatively affect the Agency or the community it serves, the missed timeline is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Are there tests of the goods to verify performance? If yes, a failed test is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of Goods

- Is a small business manufacturing or delivering the goods? If so, are there any risks associated with a small business manufacturing or delivering the goods? If yes, this is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.



If you are unclear about any of these issues, please call your Contract Professional or a Subject Matter Expert. After these questions are complete, please set up a meeting with your Agency's Contract Professional to continue the collaborative process of preparing the solicitation for issuance.



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service

Use this checklist to define the functional and technical requirements for the service.

Instructions

11. Please answer each relevant question. Your answers to these questions will become the Statement of Work and will influence some of the terms and conditions in the final contract. The contract professional will work with you to align these requirements and the contract terms and conditions.
12. These lists are not exhaustive; these questions are just the beginning of your conversation with Agency stakeholders. So, in your own daily work, start with this list and build on it.
13. These questions may also help you identify risks and associated losses. Please see below for instructions on the inclusion of your answers in the Risk Monitoring Template.
14. These questions and answers will also help form your Contract Summary.
15. For goods, see the Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Good.

Business Objectives (Why do the work)

- What is causing the need, problem, challenge or issue?
- What is the vendor doing to meet this need, problem or challenge?
- Is the vendor providing services directly to the agency or providing services to the community on behalf of the Agency?
- What outcome is the Agency looking for from this vendor?
 - Deliver _____ to _____ on time for proper maintenance of _____.
 - Provide a stable “app” that allows _____ to more easily _____ when scheduling appointments with _____.
 - Provide a platform to easily track _____, which will allow the agency to better track _____ for federal grant reporting.
 - Write your statement here.
- Summarize here:* What is the purpose of the contract? (This will be used in any solicitation for a competitive bid/quote.)



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service

Developing the Work (What is the work)

- List the specific tasks or duties the vendor will provide to satisfy the need, problem or challenge?
 - Place these duties or tasks in order of importance, with the most important being numbered 1.
- How does the service function? (Note, these are your technical and functional requirements.)
 - Think in terms of verbs: design, deliver, report, investigate, etc.
- What are the Agency's obligations to the vendor (access to a building, computer system, technical drawings, etc.)? List those Agency requirements so the Contract Professional can determine how to include them in the contract.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the service need to meet a regulatory or policy obligation? List them.
- Are there any qualifications required of the vendor and/or their staff to perform the work?
- Check your work: Are the functional and technical requirements clearly written in a form that the vendor and the Contract Manager both understand?
 - Use simple sentences, verbs, industry terms, and industry standards.
 - Are there *implied* requirements (such as one party providing the other party data or drawings or access to a system) that are not outlined so far? List them.

Describing Performance (How and when is the work done to specifications)

- When does the service need to start?
- Is the timeline for performance/delivery, etc., clearly outlined?
 - Are there gaps in the delivery dates or "TBDs?"
 - Who, when and how will the "TBDs" be determined?
- What documents/reports will the Agency need to verify delivery of the services?
- What other objective factors will the Agency use to verify the work?
 - Think of things like: number of visits, number of people served, software functions for a time period without failing, reports delivered, etc.
- List the unit of measurement here: _____ . If there is no unit of measurement, skip the next checkbox below.
- If there is a unit of measurement, answer these questions:
 - Who will record the data about this unit of measurement?



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service

- How often will the recording party collect the data?
- In what form will the recording party report the data?
- How will the receiving party validate that the data is accurate?
- Who will review that data?
- Who at the Agency will approve of data?
- What should happen if the service does not meet the requirements? (Note, these will be incorporated into the contract terms and conditions.)
 - Will the vendor have the right, time, and ability to “cure” or fix the service or deliverable (software)? How will that work? What timeframe? Who would be negatively impacted if the services are defective?
 - If the vendor will have the right to re-do work, what is that process? Who will pay for the re-work?
- How do you know that the work is “finished”? What is the least the vendor can do to call the project done?
- Check your work:* Are the performance requirements clearly written so the Contract Manager can demonstrate performance or demonstrate the lack of performance when talking to the vendor about its performance?

Acceptance (What happens if the services don't meet expectations?)

The contract template will have generic acceptance language, and usually refers back to the scope of work or technical specifications for acceptance criteria. This section will provide the Agency and the vendor acceptance criteria. (Acceptance criteria provides guidance about how and when the work is complete. Complete can mean a part of the service is complete or all of the services are complete. Please see the Defined Terms in the contract for the applicable definition.)

- Who at the Agency will verify that the services are delivered? What does that person need to verify that the goods and services are delivered? Is it the same person who will approve the data to validate a performance metric from above?
- Who at the Agency will verify that the services meet the technical and functional specifications? In other words, that the services meet the Agency's requirements? What does that person need to verify technical specifications for the goods and services?
- Is testing required to validate performance? When, by whom and how are those tests to be done?



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service

- Does this service require quality assurance (QA) audits, or other procedures to verify or validate performance? When, by whom and how are those to be done?
- Are there additional expenses for on-site tests? Who pays for them?
- What if something is rejected and needs to be tested again? Who pays for that process?
- How do we enforce these performance requirements? (If you have any questions, please ask your Contract Professional.)
- Check your work:* Is the acceptance process clearly outlined so the Agency can formally accept or reject the services? (Note, acceptance leads to payment, and rejection leads to re-work).



Reassess the answers to the following questions as your answers may indicate a potential risk and associated loss to the Agency. If you are unclear at this point, please call your Contract Professional or a Subject Matter Expert.

Risk Questions

These questions (from above) may indicate a potential risk and associated loss to the Agency.

- Is the vendor providing services directly to the community on behalf of the agency? If yes, this is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the service need to meet a regulatory or policy obligation? If you listed any policies, regulations or statutes please work with your Agency stakeholder and Contract Professional about potential risks.
- List any qualifications required of the vendor and/or their staff to perform the work? If there are qualifications, the loss of or lack of qualifications is a potential risk and needs to be addressed in the legal terms and conditions. Note these qualifications as a risk in the Risk Monitoring Template and follow the directions in the template.
- Is the timeline for performance/delivery etc. clearly outlined? If a missed timeline could negatively impact the Agency or the community it serves, the missed timeline is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.



CM 201 Requirements Checklist; Low Dollar Value-Low Risk Contracts and Purchase of a Service

- Are there tests of the service deliverables? If yes, a failed test is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Does this good or service require quality assurance (QA) audits, or other procedures to verify or validate performance? If yes, a failed quality assurance audit is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Is a small business performing the work? If so, are there any risks associated with a small business performing the services? If yes, this is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Where is the source of funding? If the funding is from another source such as the Federal Government, there is a potential risk if the vendor does not perform, and, the Agency has additional tracking and reporting requirements. These issues need to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.



If you are unclear about any of these issues, please call your Contract Professional or a Subject Matter Expert. After these questions are complete, please set up a meeting with your Agency's Contract Professional to continue the collaborative process of preparing the solicitation for issuance.

CM 301 Tools

- CM 201 CM 301 Contract Closeout Checklist
- CM 201 CM 301 An Informal Process to Resolving Disputes
- CM 201 CM 301 Kickoff Meeting Checklist
- CM 301 Change Management Checklist
- CM 201 CM 301 CM 401 Risk Monitoring Template
- CM 301 Contract Management Checklist
- CM 301 Contract Termination Checklist
- CM 301 Contract Termination Language
- CM 301 Lessons Learned Checklist
- CM 301 Requirements Checklist Hybrid
- CM 301 When Issues Persist Checklist



CM 201 and CM 301 Contract Closeout Checklist

Use this checklist to close out the contract with the vendor.

Instructions

These lists are not exhaustive; these questions are just the beginning. These questions will help your Agency conform to policy and laws. Please consult your Agency's policies and all state and federal laws. In your own daily work, start with this list and build on it.

Document Retention (Check your Agency's policies and laws)

- Have you collected all contract documents into one file location?
 - Original Contract
 - Amendments, schedules, modifications
 - Notices of any kind
 - Corrective action plans
 - Warranty documents for goods
- Deliverables
 - From the vendor to the Agency
 - Invoices, shipping receipts, reports, spreadsheets, drawings, etc.
 - Manuals, instruction documents etc.
 - From the Agency to the vendor
 - Formal acceptance notices, if any
- Relevant communications
 - Memos (even if contained in an email)
 - Emails that contain follow up accountability (duties, tasks, deadlines)
- Confidential Information
 - Check the contract for the terms for the receiving party to retain, return, or destroy confidential information.
 - If the vendor has Agency confidential information send the vendor a notice to return or destroy that information per Agency policies.

Delivery of all Contract Goods/Services

- Verify with the end user that all goods and services are completely delivered to the Agency. Do not close a contract with anything still outstanding.

Invoice Audit

- Has the vendor submitted all invoices?
- Has your Agency approved all the invoices?
- Have you tracked the invoices against the budget for this contract?



CM 201 and CM 301 Contract Closeout Checklist

- Have you completed any other applicable Agency financial procedures?

Return of Service Items

- Has the vendor returned all service items (such as badges, computers, removable drives, or cleared out desks etc.)?
- Has the Agency returned all service items to the vendor (such as computers, tablets, removable drives, etc.)?



CM 201 and CM 301 An Informal Process to Resolving Disputes

Once you see an issue, follow these steps.

Step 1 – Gather information from all sides of the dispute

Talk to people from the vendor's organization as well as people in your Agency. Only in that way can you weigh all the information to get a fuller picture of the root cause of the problem. Ask open-ended questions to get the issue fully defined and understood by all the parties.

Step 2 – Create a safe meeting to talk about things

Then, create a safe setting in a meeting to talk about the problem and brainstorm a solution. A safe meeting means the parties cannot blame one another or show any anger. It's your role to calm people to ensure that all parts of the problem are revealed, not just the parts that make your Agency look good and the vendor's organization look bad.

Step 3 – Build your bridge to resolution through shared interests

Build common ground in the meeting. You will literally use words such as, *"we all can agree that . . . is important to both organizations."* You may say something to this effect so often you'll feel like a broken record but it is the best way to move people towards a workable solution.

Step 4 – Validate that the solution will functionally work

Before the parties can implement the solutions you are discussing, stop to validate that all your stakeholders and the vendor's stakeholders can meet any newly agreed upon solution. This is an important step in the process. Too often, executives without enough functional knowledge make agreements that their organizations are literally not set up to perform. Since it is your role to ensure compliance to the new requirements, validate performance before any formal changes begin.

Step 5 – Document, document, document

The final step is to summarize the resolution in some written form. In very informal settings, the parties may document the issue, the solution and the target date for resolution in a memo attached to an email. Be sure to circulate the memo to all agency and vendor stakeholders. Other more complex circumstances will require a contract modification, change order, or amendment. In that circumstance, the Contract Manager will involve the Contract Professional.

Kick-off Meeting Checklist

CM 101 discusses the need to have a kick-off meeting as part of contract management. But, there is one very important aspect of these kick-off meetings that is usually overlooked—aligning your understandings with the vendor’s understandings.

Instructions

4. If you feel that a meeting with the vendor is necessary, please consider these questions in advance of any meeting with the vendor.
5. Choose the right type of meeting (in person or call).
6. In more complex service contracts, you may choose to include the vendor’s personnel, such as the people delivering the day-to-day services.

Aligning with a Vendor

- What obligations does the vendor agree they have to perform? (Please don’t assume the vendor has read the Statement of Work or the final contract.)
- What roles at the vendor’s business (and individuals in those roles) will accomplish those obligations?
- What skills or functional background do those individuals have?
- What are the levels of authority?
 - Should you tell the man who comes to wax the floors to remember to wax the hallway or should you talk to the owner?
 - Should you tell the vendor’s president that a test failed to meet expectations or the lead software architect? Or, both?
- What tools or systems will they be using to coordinate multiple internal team members?
- What tools do they want to use to communicate with the Agency? (Calls, email, meetings, meeting notes)
- What Agency obligations are they relying on? (Approvals, scheduling meetings etc.)
 - Do you agree with those obligations?
- From the vendor’s perspective, does the Agency have implied (unstated) obligations to the vendor? (If so, clear those up at this meeting.)

The **Contract Summary** and the results of the kick-off meeting will dictate your over-arching contract and relationship management strategy.



CM 301 Change Management Checklist

Instructions

1. Check the contract for restrictions on the parties' ability to modify an existing contract.
2. Check the competitive solicitation RCW **39.26.120** for applicability. The statute may not permit a change to the contract. Questions to ask that might prohibit changes to the contract.
 - Will the proposed change increase the amount or type of work the vendor will perform?
 - Will the proposed change increase the price or fees the vendor will charge for the work?



If you believe the contract cannot be modified or are uncertain if the contract can be changed, but believe that it is in the best interest of the Agency to do so please reach out to your Contract Professional ASAP.

3. If you can modify the contract, please complete this checklist and provide the information to the Contract Practitioner.
 - Will the proposed change increase the overall benefit to the Agency? If so, summarize the benefit.
 - Is the change unavoidable (such as legislative changes)? If so, see the next bullet.
 - Is the change the result of:
 - An omission? What is the omission?
 - An error? What is the error?
 - A change in the business requirements? What are those requirements?
 - A change in legislation or regulation? What is that legislative change?
 - A change in policy or procedure? What is that policy or procedure?
 - Will the change impact the schedule, milestone, or phasing of the project?
 - Is the quality of the project deliverable changed?
 - Is the service level agreement, metric, or key performance indicator impacted?
 - Now clearly describe the proposed change.*
 - Technical/functional aspects of the change.
 - Note: Can the party who is accountable for the change (at either the Agency or vendor) capable of delivering the change? Does that party have the expertise to implement the change? This may be a very significant consideration in highly technical contracts.
 - Operational implications of the change at the agency.
 - Who is the source of the change (Agency, vendor, another vendor)?
 - Is there a history of contract changes with this vendor, why?
 - List all the stakeholders at the agency impacted by the proposed change.



CM 301 Change Management Checklist

- Summarize how key stakeholders will be impacted.
- Describe the evaluation process of the proposed change.
- Who at the agency needs to initiate the proposed change?
- Who will approve/reject of the proposed change?
 - At the Agency?
 - At the vendor?
- How will the proposed change be implemented?
 - By the Agency?
 - By the vendor?
 - Are both parties clear on all actions associated with the proposed change?
 - What is the proposed date the proposed change will take effect?
- How will the Agency verify compliance with the proposed change?
 - If the change affects another project or part of an agency program, ensure that the changed contract implementation does not adversely affect the other project or program.
- What documentation is needed (such as amendments, schedules, technical specifications)?
 - Original contract and associated documents.
 - Changed contract documents.
 - Memos or emails about the proposed change.
- Describe how the agency and vendor project teams are going to implement the proposed change.
- Is the change best done now or at another time? If now, why now and not wait until the contract can be re-issued for solicitation?
- Will the proposed change alter standard terms or conditions? If so, describe.
- Will the proposed change affect any Agency obligations, such as payments? If so, describe.
- How will you communicate the changes to the necessary stakeholders?
- Who at the Agency will approve or authorize the contract modifications?
- Is there a chance that the proposed change could be rejected by someone at the agency?
Why?
- When should the change take place, if approved?



We revisit the issue of risk again. The Contract Manager has to assess the risk associated with the proposed change. Many changes to more complex agreements may affect the original risk profile, and therefore, the risk analysis may need to be revisited.



CM 301 Change Management Checklist

Agency

- What is the risk (potential for loss) to changing the contract?
- What is the risk (potential for loss) to not changing the contract?
- What controls are in place to reduce the risk?
- What approvals does the agency need to document and manage the risk?
- If the change to the contract is approved, how will the Contract Manager ensure compliance?
- Check your work.* Document the risk analysis and the approval process.

Vendor

- What is the vendor's internal approval process for contract changes?
- Who at the vendor will oversee the change process for the vendor?
- Who at the vendor will implement the changes to the contract?
- What is the vendor's change control process to ensure that risks are mitigated?

If the proposed change is approved by the Agency and formally documented as a contract modification, consider calling another kick-off meeting (see Chapter 8).

Risk Monitoring Template

List of Risk Questions

From the CM 301 Requirements Checklist—Hybrid Purchase

- Is the vendor providing goods/services directly to the community on behalf of the agency?
- Are there agency policy, regulatory and/or statutory requirements affecting risk?
- Any required qualifications of the vendor and/or their staff?
- Timeline for delivery create risk?
- Inspections or testing to accept the goods?
- Are quality assurance audits needed?
- Is the vendor providing a service that could injure people or property (for example, welding)?

Agency-Vendor Interdependency

Map out the dependencies

- What is the vendor depending on to do its work?
- Who is the vendor going to depend on to receive information, data, approvals, etc.?
- What is the Agency depending on? (Data, reports, samples, draft versions, etc.)
- Who is the Agency going to depend on? (from this vendor or another vendor)
- Who will test, inspect or accept work? (In other words, does someone need to travel to your location for the Agency to test a system?)
- Who within the Agency will approve work and is that the same person who will formally accept the work according to the performance criteria?
- What are the time frames associated with these dependencies?
- What are the potential barriers to receiving adequate information, data or approvals associated with the dependency?

Statement of Work

- Transition Planning Schedule.
 - This is a schedule to transition work from one party to another. It is not the same as vendor milestone dates, which is vendor specific. This schedule will include anticipated dates the Agency or possibly another vendor will transition its work to the vendor.
 - This language would outline the Agency criteria for approving of the transition of work from the vendor to the State or from one vendor to another vendor.
- Milestone Dates. There are different categories for
 - Vendor delivery,
 - Agency approval/acceptance,
 - CM invoice submittals and payments.

- Vendor Representative Named as Project Manager. Some vendors prefer a title to a named individual.
- Acceptance Criteria.
 - Note the circular nature of template contracts. Templates will refer back to the scope of work, technical specifications, vendor's response, or applicable standards.
 - Be sure that formal acceptance or applicable industry standards are included in the scope of work or technical specifications. These mechanisms act as a control.
- Reports and Reporting Timeline. The vendor will need to demonstrate its compliance with transitions in the form of a report of some kind. And, how often does the Agency wish to receive these reports. Consider tying them to the acceptance criteria.
- Performance criteria.
 - Is the transition happening all at once or over a period of time? If over a period of time, consider a metric (90 percent complete by a date) or a Service Level Agreement (90 percent on-time delivery by a date).

Financial Risks

- Compliance
 - Ensuring the vendor complies with laws and regulations regarding federal funding (or other sources of funding)
 - Ensuring the vendor is appropriately insured and complies with insurance reporting requirements
 - Ensuring that sub-contractors working for the vendor comply with laws, regulations and policies
- Small businesses
 - Insufficient cash flow to complete services or deliver goods
 - Insufficient cash flow to pay sub-contractors or employees
 - Insufficient (or lapsed) insurance coverage
- Insufficient insurance for:
 - Goods or services provided to the community on behalf of the Agency
 - Complex services that pose a potential risk to the Agency (such as complex Information Technology work)
 - Vendor employees who work on-site at the Agency
- Wrong type of insurance for the list noted above
- Does the Agency require proof of insurance for the duration of the contract term?
- Bankruptcy, Insolvency, Receivership
- Vendor mergers/acquisitions with other businesses
- Insufficient auditing of invoices against contract payment terms
- Lack of auditing the vendor's records when an issue arises
- Insufficient or non-existent recording keeping for an audit process

Hybrid Contract Risks

- Is the vendor providing goods/services directly to the agency or providing goods/services to the community on behalf of the agency?
- Is the vendor buying goods for the Agency from another vendor (original equipment manufacturer)? If yes,
 - Is the vendor passing through warranties from the manufacturer?
 - Is the vendor purchasing from a distributor?
 - Or, is the vendor using their own warranty provision to warrant the materials?
- What are the Agency's obligations to the vendor (technical drawings, approvals, etc.)? List those agency's requirements.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the good need to meet a regulatory or policy obligation? List them.
- If the Agency is providing any goods/equipment for this Statement of Work, how does the Agency stay within the provisions of the original equipment manufacturer warranty for those goods/equipment as the vendor accesses the items with the good/service the vendor provides?
- List any required qualifications for the good, such as meeting OCIO standards?
- Does the good have its own software of any kind at all? If so, how does this software code impact any existing software code the Agency is using?
- List any required qualifications required of the vendor and/or their staff to perform the services?
- Which one is dependent on the other? Does the good arrive first or does the service start first?
- Is the timeline for performance/delivery etc. clearly outlined?
 - Are there gaps in the delivery dates or "TBDs"?
 - Who, when and how will the "TBDs" be determined?

Intellectual Property Risks

- How robust is your Agency's oversight of vendor's who have access to
 - Sensitive Agency data,
- Community or citizen's data, or
 - Access to agency networks?
 - How will you personally monitor data breaches, security breaches etc.? If it is not your duty, then whose duty is it?
- How recently have your Agency's cyber-security policies been updated? Are those updates in the current contract template that will be attached to the solicitation?
- Does this project require background checks on the vendor's employees?
- Check your work: How will these risks be incorporated into the Statement of Work and contract terms?

Software Need Checklist

- What exactly—in layperson’s terms—does the agency need from the vendor? Don’t worry about talking in legal terms for now, just make sure you list things like:
 - Does the agency need to make adjustments to the code over time?
 - Does the agency need to get the code to work with new items that agency might purchase, such as new elements in a security system in the near future?
 - Does the agency need to include the custom software into an existing network?
 - Does the agency need the ability for other vendors to access this custom code over time?
 - In terms of use of or ownership of the code, the Contract Professional and legal staff will align the template terms with what the business needs.
- How long does the vendor intend to service the software (i.e. upgrades)?
- How long does the Agency project using the software and updates? (months, years, decades)

Therefore, when accessing, modifying or creating drivers for older software consider the following:

- Will the vendor need access to another vendor’s software at the Agency for their work?
- Does the Agency have that right to access the software?
- Can this vendor legally help the Agency get that access?
- What is the solution if the Agency does not have the right to access the software? (Note, older contracts were not well written to anticipate the issues.)



CM 301 Contract Management Checklist

Instructions

9. If you wrote the Statement of Work (SOW), your first task will be to verify that the SOW in the contract reflects your intentions and that nothing has changed. If you did not write the SOW, read it now.
10. Familiarize yourself with the contract terms and conditions (they are frequently updated).
11. Write the summary. Your contract summary will be helpful when answering *general* inquiries from internal stakeholders and the vendor. When writing the summary, *extract the information in the checklist below from the contract* (not your internal documentation).
12. Call the Contract Practitioner for advice in interpreting any terms or conditions you are unfamiliar with.

Monitoring Performance

- Specifications (technical and functional aspects of the goods/services)
- Date(s) of delivery, schedule
- What are the Agency's obligations to the vendor (in addition to payment)?
 - Testing, inspecting, approving, etc.
 - Meetings, emails, reviews, etc.

Accepting Goods and Services (Testing/Inspection/Approvals)

- Tests or inspections?
 - By whom and when
- Who at the Agency approves?
 - Test or inspection results
 - Reports
 - Payments
- List the formal acceptance criteria here.
 - How will the Agency know that the goods/services met the functional or technical criteria (tests or inspections)?
 - Who at the Agency will formally accept that the goods/services met the criteria (is it the same person who approves the tests or the person who approves the invoice)?
 - At what point will the Agency formally accept the goods/services?
 - When goods are received or when they are shipped?
 - When the services are "complete" (as defined in the contract)?
 - After tests or inspections?



CM 301 Contract Management Checklist

- Note: Tests and inspections can delay the approval and formal acceptance process. Be sure to communicate timing to the vendor to avoid potential delivery delays.



If the contract includes acceptance criteria, it is imperative that the Agency performs the duties to formally accept the work. The Agency does not want silence to be interpreted as formally accepting defective goods and non-conforming services, leading to a payment for a defective product or non-conforming service.

Metrics

- Is the Agency measuring anything, such as “on-time delivery?”
 - How is the Agency collecting that information?
 - How is the Agency going to use the information?
- What are the shipping terms and conditions for goods?
- What are the delivery terms and conditions for the services?
- What is the method to return damaged goods at the time of receiving the goods?
- Is there a warranty for defective goods discovered after accepting the goods? How long and what conditions?
- What is the method for addressing non-conforming services?

Compliance

- Are there any regulations, laws or policies associated with this purchase?
- Who at the Agency needs to verify compliance?
- Does the vendor or its staff need special qualifications?

Invoicing and Payment

- How is the payment calculated?
 - Fixed Price or Lump Sum
 - Fee for Service
 - Cost Reimbursement
 - Time and Materials
- Payments:
 - For units delivered (quantity)?
 - All at once or over a time period (Per item, per shipment, at full shipment)?



CM 301 Contract Management Checklist

- When meeting milestones or completion of phases?
- How often can the vendor invoice? (Note: this is critical to ensure that the vendor does not overcharge the Agency.)
- Does the invoice match the contracted price and method of calculation? (Prices can change over time but in a fixed price, lump sum or fee for service contract the vendor agrees not to increase the price.)
- Are all the shipping charges correct and according to the shipping terms?
- Are there taxes or duties to account for?
- Are there any surcharges, late fees, fuel charges, etc.? Are they outlined in the contract?

Personnel Roles

- Looking at the list above, what are my personal responsibilities (Contract Manager) to the vendor?
 - Are you personally formally accepting the vendor's deliverables?
 - Are you personally approving anything (reports, payments etc.)?
- What are Agency colleagues' responsibilities to the vendor in the list above?
 - Formally accepting the vendor's deliverables?
 - Approving anything (reports, payments etc.)?
- What contract requirements do I (Contract Manager) need to communicate to Agency colleagues?
- How should those duties be communicated (meeting or email)?
- What should I (Contract Manager) do to ensure that all Agency personnel continue to perform their obligations throughout the contract? (This is part of your project plan or spreadsheet.)



CM 301 Contract Termination Checklist

Use this checklist to prepare your conversation with Agency stakeholders and the Contract Professional concerning any decision to terminate a contract.

Instructions

1. These lists are not exhaustive; these questions are just the beginning of your conversation with the stakeholders. So, please add issues not listed in the bullets.
2. These questions will inform the Agency's position on termination and focus the conversation the Agency stakeholders, Contract Professional and legal staff have concerning the pros and cons associated with terminating the contract.
3. These questions may also help you identify risks and associated losses. Please be sure that the Agency stakeholders, Contract Professional are fully informed of any potential risk events and risks of loss.
4. Your answers will influence the Agency stakeholders, Contract Professionals and legal staff's decision regarding terminating the contract.
5. The documentation listed below is incredibly useful to the Agency stakeholders. And, upon termination will become part of the communication plan to the stakeholders.

The Contract

- Does the contract include language that if the Agency gives notice to the vendor of a defect or deficiency the vendor has a duty to cure that defect or deficiency?
 - Does the contract provide for a time frame to cure that defect or deficiency?
 - Does the contract require the vendor to develop a Corrective Action Plan to remedy the defect or deficiency?
 - Did you give the vendor notice of a defect or deficiency?
 - When?
 - What happened?
- What are the contract's provisions on terminating the relationship? For default (cause or breach) and convenience? (Take time to read the language as terms change over time.)
- How does the contract define acceptance (testing or inspection)?
 - Is the agency following that procedure?
 - Is there any formal notice of acceptance?
- Is the performance issue at all solved with different, better, more effective acceptance procedures? If not, why not?
- How does the contract define or outline approvals (for reports or payments)?
 - Is the agency following that procedure?
 - How are approvals documented?



CM 301 Contract Termination Checklist

Compliance or Safety Issues

- Is the performance issue affecting safety or compliance?
- Will the public be impacted because of the safety or compliance issue?
- Is the vendor providing the required insurance, licenses, certifications, safety inspections before delivery, etc.?
- Is the vendor maintaining required professional designations etc. in the delivery of goods or services?
- Is the vendor in compliance with regulations, laws or policies associated with this purchase?
- Is the Agency able to verify compliance?

Risk



Please review the Risk Monitoring Template to incorporate risk events and losses to the Agency here. If the Agency experienced loss associated with the risk event, that risk event must be documented within the Agency. That documentation must also be forwarded to the Contract Professional.

Documentation

- Does the Agency have emails from the Agency to the vendor outlining performance issues?
- Does the Agency have “official” memos or meeting notes from the Agency to the vendor outlining performance issues?
- Does the Agency have official notices from the Agency to the vendor outlining performance issues?
- Has the Agency asked the vendor to cure the defect or deficiency in writing?
- Has the Agency worked with the vendor to develop a written Corrective Action Plan?
- After the timeframe to correct the performance issue, is the vendor still struggling to perform according to the contract standards?

Termination for Default Considerations

Is there an advantage to the agency to terminate for default? (Review your own contract language, but this list refers to the template language provided in the manual.)

Assuming that there is documentation of defects, attempts to cure, and continuing defects:

- (Refer to your contract) Can the Agency realistically take over the work that is defective or deficient?
 - Does the Agency currently have staff who can perform the services?
 - Does the Agency currently have a vendor who can provide the exact goods described by the contract?



CM 301 Contract Termination Checklist

- How long would it realistically take the Agency to transfer work to an internal staff person or an existing vendor?
- Would any other parts of the Agency or community it serves be impacted by a switch to internal staff person or existing vendor?
- (Refer to your contract) Does the agency want to:
 - Reserve a right to suspend the work
 - Withhold payments
 - Prohibit vendor from incurring additional costs during investigation of vendor compliance breach and pending corrective action if Agency terminates the contract?
- (Refer to your contract) Does the Agency want the vendor to reimburse the agency the:
 - Cost difference between original contract and replacement goods/services,
 - Administrative costs directly related to the replacement of goods/services, and
 - Any other costs?



Stop here. Collect documents, write up the answers to these questions and set up a meeting with the Contract Professional to strategize the next steps with the Agency stakeholders and legal staff.



CM 301 Contract Termination Checklist

1. Termination for Default

1.1. If either Buyer or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within *[thirty (30) calendar days or other appropriate time period]* or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Buyer reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Buyer to terminate the Contract.

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1. Give notice of the failure
 2. Correction time period—coordinate the corrective actions to ensure that the plan is workable.
 3. If not corrected, then the contract can be terminated immediately, with notice.
 4. The aggrieved party triggers this termination.
 5. Buyer
 - a. Reserves a right to suspend
 - b. Withhold payments
 - c. Prohibit vendor from incurring additional costs
 - d. During investigation of vendor compliance breach and pending corrective action OR
 - e. If Buyer terminates the contract.

1.2 In the event of termination of this Contract by Buyer, Buyer shall have the right to procure the Products and Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Products and Services and the replacement costs of such Products and Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Buyer resulting from Vendor's breach. Buyer shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Buyer for Vendor's default.

1. If Buyer terminates the contract, Buyer shall have the right to procure substitute goods/services and
2. **Vendor shall be liable for damages**
 - a. **Cost difference between original contract and replacement goods/services**
 - b. **Administrative costs directly related to the replacement of goods/services**
 - c. **Any other costs**
3. Buyer shall have the right to deduct from money due vendor or to be due to the vendor



CM 301 Contract Termination Checklist

1.3 If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

This provision is critical because the rights for a Termination of Convenience are different.

1.4 This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

This provision prevents the aggrieved party from creating the default and then make a claim against the other party.

2. Termination for Convenience

This provision allows the Buyer to terminate for a business reason.

2.1 When, at the sole discretion of Buyer, it is in the best interest of the Buyer, Contracting Officer may terminate this Contract, in whole or in part, by [fourteen (14) calendar days or other appropriate time period] written notice to Vendor. If this Contract is so terminated, Buyer is liable only for payments required by the terms of this Contract prior to the effective date of termination.

The Buyer may terminate for a business reason with written notice. The Buyer shall pay Vendor for amounts due under the contract for goods/services received and accepted by the Buyer prior to the date of termination.



CM 301 Contract Termination Checklist

3. Termination Procedure

- 3.1. In addition to the procedures set forth below, if Buyer terminates this Contract, Vendor shall follow any procedures Buyer specifies in Purchaser's Notice of Termination.
- 3.2. Upon termination of this Contract, Buyer, in addition to any other rights provided in this Contract, may require Vendor to deliver to Buyer any property, Products, or Work Products specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled Treatment of Assets shall apply in such property transfer.
- 3.3. Unless otherwise provided herein, Buyer shall pay to Vendor the agreed-upon price, if separately stated, for the Products or Services received and Accepted by Buyer, provided that in no event shall Buyer pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. Buyer may withhold from any amounts due Vendor such sum as Buyer determines to be necessary to protect Buyer from potential loss or liability.
- 3.4. Vendor shall pay amounts due Buyer as the result of termination within thirty (30) calendar days of notice of amounts due. If Vendor fails to make timely payment, Buyer may charge interest on the amounts due at one percent (1%) per month until paid in full.

This provision outlines additional duties the Vendor owes to the Buyer upon any form of termination.

This provision obligates the Buyer in the notice of termination to outline the Vendor's duties upon termination.

This provision allows the Buyer to obligate the Vendor to deliver property, products, or work products specifically produced or acquired for this contract.

This provision is complicated as it has to do with the contracted price and the provisions associated with the price. The important part of this provision is that the Buyer is limited to paying the Vendor the maximum of the agreed upon contract price upon termination.

This provision outlines the payment terms upon termination.



CM 301 Lessons Learned Checklist

Use this checklist to outline lessons learned from the contract and vendor's performance that could influence a re-solicitation.

Instructions

1. These lists are not exhaustive; so, in your own daily work, start with this list and build on it.
2. These questions will inform any future solicitation of the work, and eventually any future Statement of Work.
3. These questions may also help you identify risks and associated losses to address in future solicitations.
4. Your **CM 301 Contract Summary Checklist** and the answers can also aid in developing the lessons learned.
5. For the simplest purchases of goods or services, please use the **CM 201 Lessons Learned Checklist**.

Goods/Services

- Did the vendor experience problems delivering (goods/services)?
 - What were the problems?
 - Why did those problems exist?
 - Was any part of the problem attributable to the Agency (delayed approvals)?
- Were any goods returned as damaged?
 - What were the problems?
 - Why did those problems exist?
- Were any services non-conforming?
 - What were the problems?
 - Why did those problems exist?
 - Was any part of the problem attributable to the Agency (delayed approvals)?
- Did the Agency exercise any options for lack of vendor performance (Cure Notice or Corrective Action Plan)?
- Did the agency measure performance?
 - Goods: think of things like define complete delivery, partial delivery, "defective goods," etc.
 - Services: think of things like, number of visits, number of people served, software functions for a time period without failing, reports delivered, etc.
- Did the measurements help avoid performance issues?
 - If not, what would have worked to avoid performance issues?



CM 301 Lessons Learned Checklist

Compliance

- Did the vendor provide the required insurance, licenses, certifications, safety inspections before delivery, etc.?
- Did the vendor maintain required professional designations etc. in the delivery of goods or services?
- Was the vendor in compliance with regulations, laws or policies associated with this purchase?
- Was the Agency able to verify compliance?

Invoicing and Payment

- Did the vendor invoice according to contract provisions?
- Did the invoices match the contracted price and method of calculation?

Risk



Please review the Risk Monitoring Template to incorporate lessons learned in the management of risk. If the Agency experienced loss associated with the risk event, that risk event must be documented within the Agency. That documentation must also be forwarded to the Contract Professional in the event the Agency issues a solicitation for similar work.

Additional Factors

If the Agency is considering reissuing a solicitation for the work:

- List any changes to the requirements here.
- List any changes to the contract terms and conditions that would ensure appropriate vendor performance.
- Provide the answers to all of these questions to your Agency's Contract Professional for review before the issuance of any solicitation for the work.



CM 301 Requirements Checklist: Hybrid Contracts

Use this checklist to define the functional and technical requirements for a hybrid statement of work (goods and services).

A hybrid Scope of Work includes the purchase of physical items and services associated with the item purchased. For example, the purchase of an electrical generator, operation, maintenance and repairs of that electrical generator is a hybrid scope of work. The purchase of computer equipment and custom designed software code is also a hybrid scope of work. Combining two different types of purchases will require some additional work on the Statement of Work to get the contract provisions to work efficiently.

Treat each of the purchases individually before looking at how they interact with one another. Once the Contract Professional chooses the contract template, the Contract Manager will then work with the Contract Professional to ensure that the secondary aspect of the purchase is adequately addressed in the contract terms. Often contract templates cover one type of purchase. This checklist will help that collaborative process.

Instructions

6. Please answer each relevant question. Your answers to these questions will become the Statement of Work and will influence some of the terms and conditions in the final contract. The Contract Professional will work with you to align these requirements and the contract terms and conditions.
7. These lists are not exhaustive; these questions are just the beginning of your conversation with Agency stakeholders. So, in your own daily work, start with this list and build on it.
8. These questions may also help you identify risks and associated losses. Please see below for instructions on the inclusion of your answers in the **CM 301 Risk Monitoring Template**.
9. These questions and answers will also help form your **CM 301 Contract Management Checklist** and summary.

Business Objectives (Why do the work)

- What is causing the need, problem, challenge or issue?
- What is the vendor doing to meet this need, problem or challenge?
- Is the vendor providing goods and services directly to the agency or providing goods and services to the community on behalf of the agency?
- What outcome is the agency looking for from this vendor?
 - Deliver _____ to _____ on time for proper maintenance of _____.
 - Provide a stable “app” that allows _____ to more easily _____ when scheduling appointments with _____.
 - Provide a platform to easily track _____, which will allow the Organization to better track _____ for federal grant reporting.



CM 301 Requirements Checklist: Hybrid Contracts

- Summarize here:* What is the purpose of the contract? (This will be used in any solicitation for a competitive bid/quote.)

Developing the Work (What is the work)

Goods

- What is the good being purchased? Be very specific here.
- Is the vendor buying materials for the agency from another vendor? If yes,
 - Is the vendor passing through warranties from the third-party manufacturer?
 - Or, is the vendor using their own warranty provision to warrant the materials?
- If the agency is providing any goods/equipment for this purchase, how does the agency stay within the provisions of the OEM warranty for those goods/equipment as the vendor accesses the items with the good it provides?
- How does the good properly function? (Note, these are your technical and functional requirements.) Size, shape, dimensions, weight, environment the good will be used in, etc.
- What are the agency's obligations to the vendor (technical drawings, approvals, etc.)? List those agency's requirements so the Contract Professional can determine how to include them in the contract.
- Should your agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the good need to meet a regulatory or policy obligation? List them.
- List any required qualifications for the good, such as meeting OCIO standards?
- Does the good (item) have its own software of any kind at all? If so, how does this code affect any existing software the agency is using?
- Check your work: Are the functional and technical requirements clearly written in a form that the vendor and the Contract Manager both understand?
 - Use simple sentences, verbs, industry terms, and industry standards.
 - Are there *implied* requirements (such as one party providing the other party data or drawings or access to a system) that are not outlined so far? List them.

Services

- How does the service function in connection to the good? (Note, these are your technical and functional *service* requirements.) List the specific tasks or duties the vendor will provide. Place these duties or tasks in order of importance, with the most important being numbered one. (Design, deliver, maintain, repair, etc.).
- What are the Agency's obligations to the vendor (access to a building, computer system, etc.)? List those agency requirements so the Contract Professional can determine how to include them in the contract.



CM 301 Requirements Checklist: Hybrid Contracts

- Should your Agency's policy, regulatory and statutory requirements be documented here in the service requirements? In other words, does the service need to meet a regulatory or policy obligation? List them.
- List any required qualifications required of the vendor and/or their staff to perform the services.
- Check your work:*** Are the functional and technical requirements clearly written in a form that the vendor and the Contract Manager both understand?
 - Use simple sentences, verbs, industry terms, and industry standards.
 - Are there *implied* requirements (such as one party providing the other party data or drawings or access to a system) that are not outlined so far? List them.

Describing Performance (How and when is the work done to specifications)

- When do the goods need to be delivered?
- When does the service need to start?
- Which one is dependent on the other? Does the good arrive first or does the service start first?
- Does anything have to happen before this work can be done, such as another vendor completing an audit or software consultants completing reports or designs?
- Is the timeline for performance/delivery etc. clearly outlined?
 - Are there gaps in the delivery dates or "TBDs"?
 - Who, when and how will the "TBDs" be finalized?
- Are there milestones (or gateway reviews or progress reports) to track performance/delivery?
 - Are they tied to a report? When, by whom, how will the report be delivered?
 - Are the milestone dates tied to payment terms? How is this outlined?
 - How often are milestones monitored and by whom at your organization?
- What documents/reports will the agency need to verify delivery of goods and services? How will these documents paint a complete picture for the stakeholder who will approve the work?
- What objective factors will the agency use to verify the good meets technical requirements and that the services meet performance requirements? These are your performance measures which will become metrics or Service Level Agreements (SLA).
- What are the suggested industry SLAs? Will an industry SLA work for this agreement? Why or why not?
- List the SLA here: _____.
- List the SLA target here: _____.
- Then answer these questions:
 - Who will record the data about this SLA?
 - How often will the recording party collect the data?
 - In what form will the recording party report the data?
 - How will the receiving party validate that the data is accurate?



CM 301 Requirements Checklist: Hybrid Contracts

- Who will review that data?
 - Who at the Agency will approve of the data?
- What happens if the vendor misses the target?
 - The first time?
 - At a critical time in the service?
 - At the beginning of the contract implementation?
 - More than once? In what time frame? (Twice in a year or twice in a month?)
- What should happen if the good does not meet the requirements? (Note, these will be incorporated into the contract terms and conditions.)
 - Will the vendor replace the good or item? What is that process? Who will pay for shipping the defective item back to the vendor and shipping the replacement item to the agency? Does the item need to be new or the refurbished version of the defective item originally delivered?
- What should happen if the service does not meet the requirements? (Note, these will be incorporated into the contract terms and conditions.)
 - Will the vendor have the right, time and ability to “cure” or fix the service or deliverable (software)? How will that work? What time frame? Who would be negatively impacted if the service is defective?
- How do you know that the work is “finished?” What is the least the vendor can do to call the project done?
- Check your work:* Are the performance requirements clearly written so the Contract Manager can demonstrate performance or demonstrate the lack of performance when talking to the vendor about its performance?

Acceptance (What happens if the goods and/or services don't meet expectations)

The contract template will have generic acceptance language, and usually refers back to the scope of work or technical specifications for acceptance criteria. This section will provide the Agency with the vendor acceptance criteria. (Acceptance criteria provides guidance about how and when the work is complete. Complete can mean a part of the service is complete or all of the services are complete. Please see the Defined Terms in the contract for the applicable definition.)

- Who at the agency will verify that the *goods* are delivered? What does that person need to verify that the goods are delivered?
- Who at the agency will verify that the *goods* meet the technical and functional specifications? In other words, that the goods are the size, shape and form ordered?
- Who at the agency will verify that the *services* are delivered on time? What does that person need to verify that the services are delivered on time?



CM 301 Requirements Checklist: Hybrid Contracts

- Who at the agency will verify that the *services* meet the technical and functional specifications? What does that person need to verify that the services meet the Agency's requirements?
- Are there inspections of goods? When, by whom and at what point? The vendor at the point of shipment or the agency at time of delivery?
- Is testing required to validate either performance of the good or service? When, by whom and how are those tests to be done?
- Does the good or does the service require quality assurance (QA) audits, or other procedures to verify or validate performance? When, by whom and how are those to be done?
- Are there additional expenses for inspections or certificates of compliance etc.? Who pays for them?
- What if something is rejected and needs to be inspected again or tested again? Who pays for that process?
- Does the purchase of the good constitute acceptance or does a successful test with the incorporation of the service constitute acceptance?
- How do we enforce these performance requirements? (If you have any questions, please ask your Contract Professional.)
- Check your work:* Is the acceptance process clearly outlined so the Agency can formally accept or reject the goods and services? (Note, acceptance leads to payment, and rejection leads to replacement/re-work).



Reassess the answers to the following questions as your answers may indicate a potential risk and associated loss to the Agency. If you are unclear at this point, please call your Contract Professional or a Subject Matter Expert.

Risk Questions

These questions (from above) may indicate a potential risk and associated loss to the Agency.

- Is the vendor providing goods and/or services directly to the community on behalf of the agency? If yes, this is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the good or service need to meet a regulatory or policy obligation? If you listed any policies, regulations or statutes please work with your Agency stakeholder and Contract Professional about potential risks.
- List any required qualifications required of the vendor and/or their staff to perform the work. If there are qualifications, the loss of or lack of qualifications is a potential risk and needs to be addressed in the legal terms and conditions. Note these qualifications as a risk in the Risk Monitoring Template and follow the directions in the template.



CM 301 Requirements Checklist: Hybrid Contracts

- Is the timeline for performance/delivery etc. clearly outlined? If a missed timeline could negatively affect the Agency or the community it serves, the missed timeline is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Are there tests of the goods or service deliverables? If yes, a failed test is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Does this good or service require quality assurance (QA) audits, or other procedures to verify or validate performance? If yes, a failed quality assurance audit is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Is a small business performing the work? If so, are there any risks associated with a small business performing the services? If yes, this is a potential risk and needs to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Where is the source of funding? If the funding is from another source such as the Federal Government, there is a potential risk if the vendor does not perform, and, the Agency has additional tracking and reporting requirements. These issues need to be addressed in the legal terms and conditions. Note this risk in the Risk Monitoring Template and follow the directions in the template.
- Is the vendor buying materials for the Agency from another vendor? If yes, there is a risk of invalidating the original manufacturer's warranty. These issues need to be addressed in the legal terms and conditions.
- Does the purchase of the good constitute acceptance or does a successful test with the incorporation of the service constitute acceptance because the acceptance of the good is tied to the service? If acceptance is tied together, this is a critical juncture in the project. As a juncture, it poses a potential threat of loss to the Agency if the good or the service fail to function when working together for the first time. This juncture should be noted in the Risk Monitoring Template and follow the directions in the template.
- Are there milestones (or gateway reviews or progress reports) to track performance/delivery? These milestone dates are points where a risk event can occur. Please place these milestones into your Contract Monitoring Summary. If a risk event occurs, the risk is then placed into the Risk Monitoring Template and follow the directions in the template.



CM 301 Requirements Checklist: Hybrid Contracts



If you are unclear about any of these issues, please call your Contract Professional or a Subject Matter Expert. After these questions are complete, please set up a meeting with your Agency's Contract Professional to continue the collaborative process of preparing the solicitation for issuance.



CM 301 When Issues Persist Checklist

Despite all of the Contract Manager's best efforts, some issues will persist. When the issues persist, follow these steps in order:

5. Increase the amount of contract management both from the Agency and from the vendor.
6. Ensure appropriate vendor representation from a person with the skill set needed (look at qualifications etc.) at all performance related meetings.
7. Escalate to Agency stakeholders as long as you can provide proper documentation about:
 - the issue,
 - steps taken to resolve the issue so far, and
 - suggested steps going forward.
8. Refine the project deliverables by removing scope.
 - In other words, the Agency may seek to step in to take over, or
 - to take over on behalf of another vendor to take over the project.
9. Terminate for cause or cancel for convenience (see Chapter 11 for termination discussion).

When following these steps, ensure that the agency and the vendor allocate people to ensure compliance to the resolution. It is important to maintain an issue register log to track the issue and its resolution.



All of these steps should include participation by your Agency's Contract Professional. Any decision to remove scope or terminate the contract will require the inclusion and skills of the Contract Professional.

CM 401 Tools

- CM 201 CM 301 CM 401 Risk Monitoring Template
- CM 401 Bidder Issue List
- CM 401 Approach to Negotiating Redlines
- CM 401 Sample Governance Contract Terms
- CM 401 Exit Management Plan Checklist
- CM 401 Strategic Relationship Requirements Tool
- CM 401 Transition Plan Checklist
- CM 401 Negotiation-Action Tracking Spreadsheet

Risk Monitoring Template

List of Risk Questions

From the CM 301 Requirements Checklist—Hybrid Purchase

- Is the vendor providing goods/services directly to the community on behalf of the agency?
- Are there agency policy, regulatory and/or statutory requirements affecting risk?
- Any required qualifications of the vendor and/or their staff?
- Timeline for delivery create risk?
- Inspections or testing to accept the goods?
- Are quality assurance audits needed?
- Is the vendor providing a service that could injure people or property (for example, welding)?

Agency-Vendor Interdependency

Map out the dependencies

- What is the vendor depending on to do its work?
- Who is the vendor going to depend on to receive information, data, approvals, etc.?
- What is the Agency depending on? (Data, reports, samples, draft versions, etc.)
- Who is the Agency going to depend on? (from this vendor or another vendor)
- Who will test, inspect or accept work? (In other words, does someone need to travel to your location for the Agency to test a system?)
- Who within the Agency will approve work and is that the same person who will formally accept the work according to the performance criteria?
- What are the time frames associated with these dependencies?
- What are the potential barriers to receiving adequate information, data or approvals associated with the dependency?

Statement of Work

- Transition Planning Schedule.
 - This is a schedule to transition work from one party to another. It is not the same as vendor milestone dates, which is vendor specific. This schedule will include anticipated dates the Agency or possibly another vendor will transition its work to the vendor.
 - This language would outline the Agency criteria for approving of the transition of work from the vendor to the State or from one vendor to another vendor.
- Milestone Dates. There are different categories for

- Vendor delivery,
- Agency approval/acceptance,
- CM invoice submittals and payments.
- Vendor Representative Named as Project Manager. Some vendors prefer a title to a named individual.
- Acceptance Criteria.
 - Note the circular nature of template contracts. Templates will refer back to the scope of work, technical specifications, vendor's response, or applicable standards.
 - Be sure that formal acceptance or applicable industry standards are included in the scope of work or technical specifications. These mechanisms act as a control.
- Reports and Reporting Timeline. The vendor will need to demonstrate its compliance with transitions in the form of a report of some kind, and, how often the Agency wishes to receive these reports. Consider tying them to the acceptance criteria.
- Performance criteria.
 - Is the transition happening all at once or over a period of time? If over a period of time, consider a metric (90% complete by a date) or a Service Level Agreement (90% on-time delivery by a date).

Financial Risks

- Compliance
 - Ensuring the vendor complies with laws and regulations regarding federal funding (or other sources of funding)
 - Ensuring the vendor is appropriately insured and complies with insurance reporting requirements
 - Ensuring that sub-contractors working for the vendor comply with laws, regulations and policies
- Small businesses
 - Insufficient cash flow to complete services or deliver goods
 - Insufficient cash flow to pay sub-contractors or employees
 - Insufficient (or lapsed) insurance coverage
- Insufficient insurance for:
 - Goods or services provided to the community on behalf of the Agency
 - Complex services that pose a potential risk to the Agency (such as complex Information Technology work)
 - Vendor employees who work on-site at the Agency
- Wrong type of insurance for the list noted above

- Does the Agency require proof of insurance for the duration of the contract term?
- Bankruptcy, Insolvency, Receivership
- Vendor mergers/acquisitions with other businesses
- Insufficient auditing of invoices against contract payment terms
- Lack of auditing the vendor's records when an issue arises
- Insufficient or non-existent recording keeping for an audit process

Hybrid Contract Risks

- Is the vendor providing goods/services directly to the agency or providing goods/services to the community on behalf of the agency?
- Is the vendor buying goods for the Agency from another vendor (original equipment manufacturer)? If yes,
 - Is the vendor passing through warranties from the manufacturer?
 - Is the vendor purchasing from a distributor?
 - Or, is the vendor using their own warranty provision to warrant the materials?
- What are the Agency's obligations to the vendor (technical drawings, approvals, etc.)? List those agency's requirements.
- Should your Agency's policy, regulatory and statutory requirements be documented here in the functional requirements? In other words, does the good need to meet a regulatory or policy obligation? List them.
- If the Agency is providing any goods/equipment for this Statement of Work, how does the Agency stay within the provisions of the original equipment manufacturer warranty for those goods/equipment as the vendor accesses the items with the good/service the vendor provides?
- List any required qualifications for the good, such as meeting OCIO standards?
- Does the good have its own software of any kind at all? If so, how does this software code impact any existing software code the Agency is using?
- List any required qualifications required of the vendor and/or their staff to perform the services?
- Which one is dependent on the other? Does the good arrive first or does the service start first?
- Is the timeline for performance/delivery etc. clearly outlined?
 - Are there gaps in the delivery dates or "TBDs"?
 - Who, when and how will the "TBDs" be finalized?

Intellectual Property Risks

- How robust is your Agency's oversight of vendor's who have access to
 - Sensitive Agency data,

- Community or citizen's data, or
 - Access to agency networks?
 - How will you personally monitor data breaches, security breaches etc.? If it is not your duty, then whose duty is it?
- How recently have your Agency's cyber-security policies been updated? Are those updates in the current contract template that will be attached to the solicitation?
- Does this project require background checks on the vendor's employees?
- Check your work: How will these risks be incorporated into the Statement of Work and contract terms?

Software Need Checklist

- What exactly—in layperson's terms—does the agency need from the vendor? Don't worry about talking in legal terms for now, just make sure you list things like:
 - Does the agency need to adjust the code over time?
 - Does the agency need to get the code to work with new items that agency might purchase, such as new elements in a security system in the near future?
 - Does the agency need to include the custom software into an existing network?
 - Does the agency need the ability for other vendors to access this custom code over time?
 - In terms of use of or ownership of the code, the Contract Professional and legal staff will align the template terms with what the business needs.
- How long does the vendor intend to service the software (i.e. upgrades)?
- How long does the Agency project using the software and updates? (months, years, decades)

Therefore, when accessing, modifying or creating drivers for older software consider the following:

- Will the vendor need access to another vendor's software at the Agency for their work?
- Does the Agency have that right to access the software?
- Can this vendor legally help the Agency get that access?
- What is the solution if the Agency does not have the right to access the software? (Note, older contracts were not well written to anticipate the issues.)



Sample Proposal Language

1.1 Bidder's Form of Response to (Insert Agency) RFP _____

The RFP documents are provided in native or PDF formats. More detail is available in Section _____ of this RFP. Each Bidder must respond to the RFP documents in accordance with the procedures and format set forth below. Failure to follow the procedures or respond in the format below may disqualify Bidder.

Do not create or send redlined documents. (Insert Agency) will only review issues raised in the Issues List. Do not send "replacement" paragraphs, as such response will not meet the requirements of this section. (Insert Agency) will not read or consider any response other than that set forth below.

1.2 Issues List (Mandatory)

Bidder's issues, concerns, exceptions or objections to any of the terms or conditions contained in the documents must be documented in an Issues List. The Issues List prepared by Bidder must set out by section or paragraph a description of each issue, concern, exception, and/or objection. **Response: Issues List**, sets forth the Issues List template to be used for the response.

If a Bidder objects to a particular term or condition, the Bidder will need to describe (in business terms and not in proposed contract or legal language) Bidder's concern and compromise terms Bidder is willing to accept. The Issues List must provide the reason or rationale supporting the item of concern and/or business counterproposal. Simply stating that a paragraph is "not acceptable" or supplying Bidder's proposed contract terms without describing (in business language) Bidder's reason or rationale will not be accepted. If Bidder does not identify specific concerns with a particular term or condition, the term or condition will be deemed accepted by Bidder, and (insert Agency) will not negotiate further changes to the term or condition. **Response: Issues List**, includes an example that illustrates an acceptable form of response for the Issues List. The Issues List provided to (insert Agency) must be attached to Bidder's Proposal in an unrestricted, editable Microsoft Word format.

(Insert Agency) reserves the right to discuss the Issues List with the Bidders and require Bidders to clarify and supplement the Issues List(s) starting in Evaluation **Stage 2** and anytime thereafter. Any changes to the Issues List will require Bidder to clarify, revise and resubmit the Issues List.



CM 401 Bidder Issues List

1.2.1 Redlined Responses

Redlined Documents Will Not Be Reviewed – Do not provide in the response, in the Issues List or otherwise, a redlined contract, paragraph or clauses. Redlined text would require (insert Agency) to make potentially inaccurate assumptions about the Bidder's specific issues or concerns. Redlined text will not be reviewed by (insert Agency).

1.2.2 Bidder's Standard Contract or Proposed Language

No Standard Bidder Form Contracts – Do not provide a copy of Bidder's standard contract or proposed language to (insert Agency). As stated above, (insert Agency) requires its own form of RFP documents in negotiations with final Bidder(s). Bidders' standard contract will not be reviewed by (insert Agency).

1.2.3 No Substantial Changes to Material Terms

Bidders are reminded that this is a competitive solicitation for _____ and that (insert Agency) cannot accept a Proposal or enter into a Contract that substantially changes the material terms and specifications published in this RFP.

1.2.4 Uses of the Issues List

The Issues List will be used initially to determine the responsiveness of the Proposal. Proposals that are contingent upon (insert Agency) making substantial changes to material terms and specifications published in the RFP will be determined to be non-responsive. (insert Agency) will consider the nature of the items on the Bidder's Issue List in determining the likelihood of completing a contract with the Bidder. Unresolved issues regarding the material business terms of the contract and documents may affect (insert Agency)'s selection of Bidders to advance to the next stage of the procurement.



CM 401 Bidder Issues List

Response: Issues List

Below is an example of an acceptable response for the Issues List.

Item	Reference Document & Section #	Issue	Bidder Proposed Solution/Rationale
1	Technology Agreement, Section 15.11	Governing Law – Washington	Bidder proposes using California law as the applicable state law. Rationale – California is the location of the Bidder's headquarters.

Reasons why response is acceptable:

- The proposed solution and rationale explain the issue and why the proposed Section 15.11 is not acceptable.
- There is no redlining.
- There is no replacement paragraph provided.

Use the following template to provide Bidder's response to **Section** _____ of the RFP. Add additional rows as needed.

Item	Reference Document & Section #	Issue	Bidder Proposed Solution/Rationale
1			
2			
3			
4			
5			
6			
7			



CM 401 Approach to Negotiating Redlines

This approach is scalable; meaning that it is appropriate for a few vendor objections as well as complex negotiations that could include hundreds of objections.

1. Understand the vendor's concern

- Ask for supporting arguments for each and every change. Please do not assume you understand the vendor's arguments. If you don't understand it, it is likely that the stakeholder will not understand it either.

2. Do a Stakeholder Analysis

- Who at the Agency will make the decision (accept or in part or reject all in part) on the objection? Are you empowered to make the decision? If so, you might want to jump to the next step.
- If an Agency stakeholder will make the decision consider completing a **CM 102 Stakeholder Analysis**.
 - In very complex issues, it is possible that many stakeholders will be involved in the discussions, but only one person can accept the vendor's objections. In that situation, complete a **CM 102 Influence Matrix** to ensure that the final decision maker is fully informed throughout the entire negotiation process.

3. Develop an Agency position

This is the heart of the process where you will use your *professional judgment* to shape the agency position to the vendor's objection.

- Understand the Agency's Position
 - First, understand your organization's considerations for the underlying paragraph that is being redlined by the vendor. This point must be underscored—*please go beyond "policy" arguments when communicating the Agency's position to a vendor objection.*
- Evaluate the Objections
 - Next, you will need to determine the amount of deviation your Agency can tolerate to still have the same level of intent supporting the underlying contract provision. By level of deviation, the range should be between no deviation at all to a complete re-write using a vendor's suggested language.
 - In other words, will the vendor's objection limit the agency's rights or is the objection simply clarifying language in the agreement? You will be hampered in this part of the analysis if you don't have a clear understanding of the underlying reasoning for the provision.
- Choose One of Three Courses of Actions
 - **Reject.** The Agency could reject the vendor's objections, all or in part. Can you make this decision and communicate it to the vendor? If so, do so. Be sure to include your Agency's



CM 401 Approach to Negotiating Redlines

reasoning. If it is not your decision, then you would communicate a suggestion to the stakeholder to reject the vendor's objection. Again, be sure to include your reasoning.

- **Accept.** The Agency could accept the vendor's objections, all or in part. Can you make this decision and communicate it to the vendor? If so, do so. Be sure to include your Agency's reasoning. If it is not your decision, then you would communicate a suggestion to the stakeholder to accept the vendor's objection. Again, be sure to include your reasoning.
- **Include the Stakeholder(s).** If you cannot make a suggestion based on the information you have gathered so far in the process, you will need to include the stakeholder(s) to aid in formulating a proposal to the vendor's objections. Again, the stakeholders may want a proposal from you to help shape their thinking on the issue.

4. Develop a tracking sheet

- ❑ The next step is to start tracking changes using the **CM 401 Negotiation Action Tracking Spreadsheet**. As the process continues, please update the tracking sheet. Track both the vendor's concerns and the Agency's concerns until a complete resolution on that issue.

5. Communicate with the Agency stakeholder

- ❑ Finally, it is time to communicate the objection, agency position as you understand it and your suggestion (if you have one) to the Agency stakeholder. The suggestions you offer is where contract professionals can add value, *especially to non-legal stakeholders who are asked to approve contract language changes*.
- ❑ Once you have a decision on the vendor's objection, the Contract Practitioner will communicate the decision to the vendor. Anything less than full acceptance of the objection will begin the back and forth communication called negotiations about that particular objection.



Schedule meetings between the vendor and Agency stakeholders regarding contract language sparingly. Many vendors will want to bypass contract professionals to talk directly with the Agency stakeholders. Agency policy and the solicitation statutes may restrict the vendor's ability to talk to Agency stakeholders. If Agency stakeholders are included in redline discussions, they will want to be fully prepared for those meetings to avoid feeling ambushed by the vendor.



CM 401 Sample Governance Contract Terms

This _____ Agreement ("**Agreement**") is made and entered into as of _____ (the "**Effective Date**"), by and between the Washington State Department _____, an agency of the state of Washington, with a principal place of business at 6835 Capitol Boulevard SE, Tumwater, Washington 98504 ("**AGENCY**"), and Vendor, a _____, with a place of business at _____ ("**VENDOR**").

WHEREAS, on _____, 20__, AGENCY issued a request for proposals ("**RFP**") to provide, _____ and to _____ (each of which above defined terms are further defined herein)

WHEREAS, on _____, VENDOR submitted to AGENCY its written response to the RFP, and VENDOR represented to AGENCY that VENDOR had the solutions, services, skills and personnel required to meet the requirements set forth in the RFP and in the Agreement.

WHEREAS, VENDOR acknowledges that during the RFP evaluation period, including the implementation planning study workshops and contract negotiations, it had sufficient time and opportunity to conduct comprehensive due diligence on the Project, including the ability to obtain a full understanding and clarification of the AGENCY Business and Technical Requirements.

WHEREAS, in reliance on the representations made by VENDOR in the RFP Response as clarified in subsequent discussions, Demonstrations, presentations to AGENCY and the commitments and assurances made by VENDOR herein, AGENCY selected VENDOR over other prospective technology providers to implement the BPMS Solution and ERA.

WHEREAS, AGENCY and VENDOR want to specify the terms and conditions under which VENDOR and AGENCY will form their technology partnership, implement the _____ and develop the _____, and engage in future projects as may be agreed to by the parties.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

ARTICLE 1

SCOPE OF AGREEMENT, PARTNERING PRINCIPLES

AND RELATIONSHIP MANAGEMENT

1.1 Scope of Agreement. The Agreement shall apply to all Solutions and Services provided by VENDOR to AGENCY, whether such Solutions and Services are contemplated as of the Effective Date or thereafter, including the licensing of new or additional products, engaging in new or additional projects, purchasing new equipment and the like, which shall all be subject to all applicable Washington state laws and policies related to competitive procurement.

1.2 Partnering Principles. The principles identified below ("**Partnering Principles**") include principles that the parties have determined to be important to ensure the success of their



CM 401 Sample Governance Contract Terms

relationship. The Partnering Principles function as a guideline regarding the parties' overall intentions for the Agreement and all Project Agreements and Contract Supplements executed pursuant to the Agreement. If any term or condition of the Agreement or any Project Agreement or Contract Supplement is ambiguous or unclear or if the parties did not anticipate a particular issue, the parties shall refer to and apply the Partnering Principles to resolve and/or address the ambiguous, unclear and/or unanticipated issue.

PARTNERING PRINCIPLE #1

DIRECT SENIOR EXECUTIVE OVERSIGHT

In a long-term strategic business relationship, direct senior executive oversight and involvement by the parties is needed to ensure all commitments and timeframes are met.

PARTNERING PRINCIPLE #2

STATE-OF-THE-ART PRODUCTS

AGENCY will be making a significant investment in the products and services to be provided by VENDOR, and AGENCY wants to ensure that VENDOR and any providers of Third Party Solutions and/or other subcontractors remain competitive solution providers. VENDOR commits that the products provided to AGENCY shall be technologically competitive as measured against **OTHER COMMERCIALY AVAILABLE PRODUCTS OF THE SAME TYPES.**

PARTNERING PRINCIPLE #3

COMPETITIVE PRICING AND PREDICTABILITY OF ON-GOING COSTS AND EXPENSES

Products and Services provided to AGENCY by VENDOR must be competitively priced. Costs and expenses must be predictable, clearly articulated, and understood by the parties prior to initiating a project or any change orders. Cost, personnel and other resource requirements must be clearly outlined for all parties.

PARTNERING PRINCIPLE #4

DECISION MAKING AUTHORITY

While ultimate decision-making authority for implementations and project-related items rest with AGENCY, VENDOR must manage its personnel, providers of Third Party Solutions and other subcontractors, and discharge its duties within the agreed parameters and requirements to ensure projects are successfully implemented.



CM 401 Sample Governance Contract Terms

PARTNERING PRINCIPLE #5

TIME-TO-MARKET SOLUTIONS

In a long-term technology relationship, time-to-market for products is critical to AGENCY. VENDOR must ensure performance on a timely basis and deliver and implement fully tested and operational products.

PARTNERING PRINCIPLE #6

QUALITY PERSONNEL TO SUPPORT THE RELATIONSHIP

Qualified personnel will be devoted by the parties to the relationship. The parties will commit their senior executives and management, as well as administrative, technical and other support personnel, to achieve the objectives of the relationship.

PARTNERING PRINCIPLE #7

OPEN ARCHITECTURE ENVIRONMENT

Products provided to AGENCY by VENDOR will operate in an open architecture environment, and VENDOR will make available to AGENCY all interfaces and supporting documentation specifications to promote interoperability among AGENCY' other systems and devices.

PARTNERING PRINCIPLE #8

COOPERATION WITH AGENCY' OTHER TECHNOLOGY PARTNERS

Given the various technology platforms supporting AGENCY, joint planning, open communication, and cooperation and collaboration between AGENCY and all of its technology partners will be required. As such, VENDOR, its providers of Third Party Solutions and other subcontractors, as necessary, will participate in these cooperative activities.

PARTNERING PRINCIPLE #9

ALIGNMENT OF ACCOUNTABILITY AND RESPONSIBILITY

Accountability and responsibility of roles will be aligned to ensure that each party is responsible for the aspects of a project or relationship that they control.

1.3 Relationship Management. The parties commit to proactive sponsorship of the relationship created under the Agreement, and to further the interests of the relationship, agree to the following:

1.3.1 General. Each party shall allocate appropriate, quality personnel to fulfill the objectives of the relationship including, as appropriate and applicable, personnel to



CM 401 Sample Governance Contract Terms

fulfill the development, implementation and support obligations set forth herein and in a Project Agreement and/or Contract Supplement. If either party believes that the other has not allocated sufficient personnel, the matter will be brought to the attention of the Executive Sponsors for resolution.

1.3.2 Executive Sponsors. Each party shall designate a senior executive-level individual(s) (for AGENCY, the "**AGENCY Executive Sponsor(s)**," and for VENDOR, the "**VENDOR Executive Sponsor**," and each an "**Executive Sponsor(s)**") who will have overall responsibility for the relationship between the parties with respect to the relationship. The VENDOR Executive Sponsor shall have full authority to act on behalf of VENDOR with respect to all matters related to the Agreement. Each party may designate a new Executive Sponsor at any time by providing written notice thereof to the other party. If AGENCY determines that individual appointed by VENDOR is not fulfilling the goals of the relationship, AGENCY shall communicate that determination to VENDOR, and VENDOR shall replace such individual with an individual that both parties agree is suitable to fulfill the VENDOR Executive Sponsor role. The VENDOR Executive Sponsor's participation as sponsor of the relationship shall not be chargeable to AGENCY.

1.3.3 Executive Briefings. The relationship with VENDOR will involve a significant investment and substantial commitment from AGENCY in the form of monies, personnel, time and effort. During the pendency of the ____ Project, the Executive Sponsors and other appropriate representatives from each party shall meet at least quarterly, or more frequently if needed, to discuss the overall relationship of the parties, the status of the ____ Project, the status of and any risks, issues and any problems or difficulties relating to the ____ Project and/or Services, whether timeframes are being met, and what actions VENDOR can take to mitigate such risks, issues, problems or difficulties.

1.3.4 VENDOR Account Executive. VENDOR shall designate an individual (the "**VENDOR Account Executive**") to serve as VENDOR's regular point of contact to administer the Agreement and projects, oversee the delivery of Solutions, Equipment (if any) and Services to AGENCY and the overall performance of VENDOR's responsibilities under the Agreement and any Project Agreements and Contract Supplements. The VENDOR Account Executive shall attend all executive briefings. If AGENCY perceives that the VENDOR Account Executive is not effectively discharging her or his duties, at AGENCY' request, VENDOR shall replace such individual. VENDOR shall not charge AGENCY for any Services, meeting time, etc., provided by the VENDOR Account Executive.

1.3.5 VENDOR Project Management. VENDOR shall appoint one or more VENDOR project manager(s) ("**VENDOR Project Manager(s)**"), and where more than one VENDOR Project Manager is assigned, then a project director to oversee the multiple VENDOR Project Managers ("**VENDOR Project Director**").

1.3.6 VENDOR Contract Manager. VENDOR shall designate an individual (the "**VENDOR Contract Manager**") to be responsible primarily for ensuring VENDOR's contractual compliance with the Agreement, and for proactively communicating and coordinating with VENDOR's Project Director, Project Manager(s) and other VENDOR



CM 401 Sample Governance Contract Terms

personnel as needed, to ensure such compliance. In furtherance thereof, the VENDOR Contract Manager shall, among other things:

(a) Be fully knowledgeable about all the commitments made by VENDOR in the Agreement, Project Agreements and Contract Supplements, especially where such commitments may differ from VENDOR's general business practices and policies;

(b) Advise VENDOR personnel and VENDOR's subcontractors on the commitments made by VENDOR to ensure the VENDOR personnel have a full and complete understanding of the level and scope of the commitments made under the Agreement, Project Agreements and Contract Supplements;

(c) Along with the VENDOR Account Executive, serve as a point of contact to administer the Agreement;

(d) Ensure that all policies and procedures relating to VENDOR's administration of the Agreement are applied consistently by VENDOR; and

(e) Such other duties or responsibilities relating to the administration of the Agreement as may be reasonably requested from time-to-time by either party.

1.3.7 VENDOR Information Security Officer; Compliance with Security Policies and Procedures, and Security Certifications.

(a) Compliance with Security Policies and Procedures. VENDOR shall comply with: (i) security requirements and obligations required by applicable Law; (ii) AGENCY Security Policies and Procedures; (iii) the then-current ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27000 series of Information Security Management Systems standards; and (iv) VENDOR's security standards, policies, guidelines and procedures, provided that AGENCY Security Policies and Procedures shall take precedence over any inconsistencies or conflicts with VENDOR's security standards, policies, guidelines and procedures (**subsections (i) through (iv)** are collectively referred to as the "**Security Policies and Procedures**"). If there is a change in the Security Policies and Procedures from and after the Effective Date that VENDOR determines increases its costs to provide Services, or Support and Maintenance Services, VENDOR may submit a Change Request detailing VENDOR's reasonable increased costs to comply with such change. AGENCY will evaluate the Change Request and either sign a Change Order paying the amounts set forth therein, whereupon VENDOR shall comply with the change in the Security Policies and Procedures, or waive VENDOR's obligation to comply with such change. The VENDOR Information Security Officer's participation shall not be chargeable to AGENCY.



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(b) VENDOR Information Security Officer Responsibilities. VENDOR shall designate a corporate officer ("**Information Security Officer**") who shall, at no cost or expense to AGENCY:

(i) Be responsible to ensure VENDOR's initial and on-going compliance with the Security Policies and Procedures;

(ii) Upon AGENCY' request, an officer of VENDOR shall provide a written certification to AGENCY, confirming VENDOR's compliance with the Security Policies and Procedures; and

(iii) Upon AGENCY' request, including following any certification related to VENDOR's compliance with the Security Policies and Procedures, meet with State of Washington's Security Program Representatives to discuss VENDOR's certification, the Security Policies and Procedures or other related matters.

The VENDOR Information Security Officer's participation shall not be chargeable to AGENCY.

(c) Security Certifications. VENDOR represents and warrants to AGENCY that VENDOR incorporates ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27000, series of Information Security Management Systems standards ("**ISO Security Standards**") in the development of its information security management and delivery of Services. If and when VENDOR becomes certified under the ISO Security Standards or other security services standard, VENDOR shall maintain such certification on an on-going basis and VENDOR shall provide AGENCY with a copy of such certifications upon request. VENDOR shall provide AGENCY with full and complete copies of any ISO Security Standards audits and reviews, and other security audits, reports and reviews, whether conducted internally by VENDOR or through a Third Party, within five (5) days of a request by AGENCY and within twenty (20) days of VENDOR's receipt of such audits, reports and reviews. If there are deficiencies cited and/or recommendations made, the VENDOR Information Security Officer, the VENDOR Executive Sponsor and other appropriate personnel from VENDOR shall meet to review the deficiencies and recommendations and develop a plan of action to address such items. The implementation of any measures to address deficiencies and/or recommendations shall not be chargeable to AGENCY.

ARTICLE 14 **DISPUTE RESOLUTION**

14.1 Administrative-Level Performance Review. If a dispute relating to the Agreement arises between the parties, the VENDOR Account Executive and the AGENCY Project Director may, but shall not be obligated to, meet and attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the initial request for a meeting, or if



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the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through an executive-level performance review as provided in **Section 14.2**.

14.2 Executive-Level Performance Review. For disputes that are not resolved at the level specified in **Section 14.1**, the Executive Sponsors may, but shall not be obligated to, meet and attempt to resolve the dispute. If such representatives are unable to resolve the dispute within five (5) business days after the parties have commenced negotiations, or ten (10) days have passed since the initial request for negotiations at this level, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through mediation as hereinafter provided or, if the parties do not agree to submit the dispute to mediation, to seek any and all rights and remedies that may be available to them as provided in the Agreement.

14.3 Voluntary, Non-Binding Mediation. If the prior levels of dispute resolution are not invoked or are unsuccessful, the parties may, but shall not be obligated to, mutually agree in writing to submit the dispute to non-binding mediation. Mediation must occur within thirty (30) days after the parties agree to submit the dispute to mediation. The parties mutually shall select an independent mediator experienced in information systems of the type in dispute, and each shall designate one or more representatives to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representatives and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party.

14.4 Redress in Court; Injunctive Relief. Informal dispute resolution under this Article shall not be a pre-condition to any action by a party to enforce its rights under the Agreement. In addition to other remedies available at law or in equity, either party may seek injunctive relief from a court of competent jurisdiction.

14.5 Continued Performance; No Tolling of Cure Periods. Except where clearly prevented by the area in dispute, the parties shall continue performing their obligations under the Agreement while the dispute is being resolved as provided in this Article, unless and until the dispute is resolved or until the Agreement and/or the applicable Project Agreement or Contract Supplement, as applicable, is terminated. The time frame for a party to cure any breach of the terms of the Agreement shall not be tolled by the pendency of any dispute resolution procedures.



CM 401 Exit Management Plan Checklist

Use this checklist to prepare an Exit Management Plan with Agency stakeholders and the Contract Manager.

Instructions

1. These lists are not exhaustive; these questions are just the beginning of your conversation with the stakeholders. So, please add issues not listed in the bullets.
2. These questions will inform the Agency's plan to exit a relationship. The exit can happen naturally at the end of a complex project or as a result of vendor default.
3. These questions may also help you identify potential risks and associated losses when exiting the relationship.
4. Your answers will create a management plan for Agency stakeholders, Contract Manager and legal staff (if any) regarding terminating the contract before the natural end of the contract term.
5. The documentation listed below is incredibly useful to the Agency stakeholders. And, upon termination, it will become part of the communication plan to the stakeholders.

The Exit Management Plan

The components of an effective exit management plan include:

1. Termination notice
2. Exit transition period
3. Exit transition plan
4. Exit governance and reporting

1. Termination Notice

Regardless of whether the agency terminates the contract or the contract ends, when working with an exit management plan, the agency should issue an exit management notice to the vendor, which specifies:

- The people, services, or parts of the agency impacted by the transition,
- The estimated total timeframe to transition any remaining work, deliverables or documents to the agency, and
- The date upon which the agency and the vendor will meet to develop the specific scope of the exit transition plan.

2. Exit Transition Period

Just as there is traditionally a timeframe to ramp up services after the contract is signed, in highly strategic relationships, there is also a transition period at the end of the contract or at termination.



CM 401 Exit Management Plan Checklist

The exit transition period generally encompasses the time from the date of the termination notice until the completion date when the exit is complete.

3. Exit Transition Plan

If the agency developed a transition plan at the beginning of the contract, the exit management plan will provide a reverse snapshot of that initial transition plan. The exit transition plan should be specific about the roles, duties, and expectations of both the agency and the vendor.

The plan should include:

- Timelines for the various activities required to exit the relationship (remember to apply project management principles to the exit),
- List of the vendor's personnel responsible managing and implementing the exit plan,
- Preparations for a transfer of knowledge regarding the work,
- Outline all items the vendor will transition to the agency such as, manuals, documentation, drawings, and anything that enables a software system to fully transfer to the agency,
- Plan for continuity of vendor's services during the transition period including a list of the vendor's support personnel,
- Communication plans for all impacted stakeholders during the exit process,
- Process for the vendor to fully answer all reasonable questions about the items being transferred,
- Identification of all security and disaster recovery tasks vendor undertook during the duration of the contract,
- Inventories of all licenses, permits, and other agreements (sub-contracts) that require notification, assignment, or transfer of rights, and
- Lists of confidential information and whether it needs to be retained, returned or destroyed.

4. Governance and Reporting

The exit process will inevitably involve questions and concerns. The resolution of any issues arising from the exit transition should be managed within the existing governance structure. And, the exit transition plan should identify the vendor's reporting requirements to the agency.

Reports may include:

- The progress of the transition,
- The destruction or retention of confidential information,
- The remaining work to be done to complete the vendor's exit from the relationship,
- Key issues impacting the timing of the exit plan,
- Potential risks while implementing the exit plan, or
- Actions that need to be taken by the various stakeholders to facilitate a smooth transition.



CM 401 Exit Management Plan Checklist

Additional Issues

- Did you include a governance structure in your exit management plan, or does your exiting governance structure suffice?
- How have you documented notice of termination or contract closeout? Does the current or standard contract notice provisions include:
 - A specific list of items (manuals, documentation, drawings, and anything that enables a software system to transfer) as part of the termination,
 - The estimated exit transition period (ideally based on a pre-agreed exit duration period), and
 - The date upon which the agency and the vendor will meet to develop the specific scope of the exit transition plan.
- Document the structure of the Agency's exit transition team: the personnel responsible for planning, managing, and implementing the transfer for your agency.
- Request the structure of the vendor's exit transition team: the personnel responsible for planning, managing, and implementing the transfer for the vendor.
- Document the required reports the Agency needs from the vendor, including the frequency of the reports.
- Document communication plans for impacted stakeholders.
- Create a financial plan to finalize invoices and open credit/debit memos, etc.
- Document who will develop inventories of all licenses, permits, and other agreements that require assignment or transfer of rights, when the list is due, and what information is to be included on the list.
- Plan for the return, retention or destruction of confidential information.
- Check Your Work*
 - Is your exit management plan fair and well documented?
 - Does the plan address all essential criteria?
 - Is the plan clear and executable?



CM 401 Strategic Relationships Requirements

Use this checklist to define the functional and technical requirements for a Strategic Relationship.

Instructions

1. Your answers to these questions will become the Statement of Work and will influence the terms and conditions in the final contract.
2. These lists are not exhaustive; these questions are just the beginning of your conversation with Agency stakeholders. So, in your own daily work, start with this list and build on it.
3. These questions may also help you identify risks and associated losses. Please see below for instructions on the inclusion of your answers in the Risk Monitoring Template.
4. These questions and answers will also help form the Scorecard and Governance structure.
5. Once the outcomes, performance indicators, and collection of data is identified, the contract professional, contract manager, the technical representatives and any SMEs can collaboratively outline the work the vendor must perform to meet the performance requirements. For this portion of the work, refer back to the Checklist for Success for a Hybrid Purchase, as it is likely that the agency will be purchasing several services from the vendor to achieve a holistic outcome. Rather than thinking about goods and a service, think about a primary service and a secondary service when answering the questions in the checklist.
6. The table referred to throughout this document is located on the last page.

Requirements Checklist

To begin to think in terms of business outcomes consider Agency's business objectives and those objectives' connection to the strategy for the relationship (note this does not say for the specific vendor).

Business Objectives

- Get copy of the business case, budget analysis, and spreadsheet with projected savings, etc., anything that the stakeholders are using to fund, direct, or internally discuss this project.
- Or in the alternative—develop a business objective questionnaire based on the Stakeholder Analysis Tool, the Checklist for Success for a Hybrid Purchase, and your own questions. Send this around for review and discussion. (Be prepared that stakeholders will have different needs, wants, or requirements.)
- Ask each stakeholder to tell you at least *two improvements* from the relationship that seem obvious to them but need to be communicated to the vendor. (These answers will validate that the technical and functional requirements are complete.)



CM 401 Strategic Relationships Requirements

- Ask stakeholders to identify at least *two potential benefits* for bringing in a vendor beyond those already communicated to you. (These answers will identify service metrics or service level agreements.)

With this information, identify 3-5 outcomes for the requirements spreadsheet. Outcomes could look like these:

- Operate a financial system that effectively and efficiently manages XYZ spend.
- Optimize the division of services, (between agencies, between vendors within an agency, between an agency and the federal government) leveraging collective capabilities to deliver ABC service to the community.
- Minimize environmental impact of JKL on the community.

Once the agency identifies the 3-5 outcomes, place them in the left most column (Business Outcome). The next step will be to identify the associated and necessary performance from the vendor. Note that this is different from the traditional way of developing scopes of work. Normally, business people think of the work requirements and then the performance requirements. *In an outcome based setting, the outcomes lead to performance and then to the work requirements.*

Performance Objectives

Identify the Key Performance Indicators (KPIs) that will demonstrate the vendor's performance against the agency's outcomes.

Ask stakeholders to tell you what their supervisors need to know about the progress of the project. For example, if the objective is:

- Operate a financial system that effectively and efficiently manages XYZ spend, then the KPI could be actual spend versus budgeted/estimated spend.
- Optimize the division of services, (between agencies, between vendors within an agency, between an agency and the federal government) leveraging collective capabilities to deliver ABC service to the community, then the KPI could be a reduction of the number of service disruptions as consumers move from one agency's services to another.
- Minimize environmental impact of JKL on the community, then the KPI could be a reduction in the carbon emissions of agency owned equipment performing a service within the agency.



CM 401 Strategic Relationships Requirements

At this point, it is important to stay high level to ensure that all stakeholders and their supervisors' needs are met. Place the KPI in the column to the right of the Business Objective Column.

- Identify any industry-wide performance standards (Service Level Agreements—SLAs) associated with the KPI. This standard will help benchmark vendor's proposals and their performance in these highly strategic arrangements. Place an industry-wide standard in the column titled performance standard. (99 percent uptime, 20 percent reduction in emissions etc.)
- If there are no known published standards, the stakeholders will create their own performance standard. That performance standard will be placed in the column.
- Identify any allowable tolerance for the performance standard. In other words, if the vendor meets the goal of meeting 90 percent of a 20 percent emissions target is that on, meeting, or below target? Use a percentage, or other numeric value. Place the numeric value in the column for tolerance.
- Identify any liquidated damages associated with a missed target. In other words, if the target is to reduce emissions by 20 percent and the vendor only reduces emissions by 70 percent of the 20 percent, should the vendor pay an amount in pre-determined liquidated damages? Place any liquidated damages in the middle column.

Next identify who will collect the data to support the metric, how the data will be collected and how often. Ask the stakeholders, a technical representative, and the Contract Manager the following questions:

- Ask stakeholders to identify any reporting requirements they will need to demonstrate performance to their supervisors. Is it clear to them and to you who will be collecting the data? Is it clear that the party receiving the data will trust the data? Will the data be in a form that is comprehensible to the receiving party?
- Then specifically determine:
 - Which organization will collect the data associated with the metric?
 - What data is needed to validate the metric?
 - How will the metric and associated tolerance be calculated?
 - How often does the collecting organization need to collect the data?

Place the answers to these questions into the various columns from the middle to the right. Then finally:

- Ask the stakeholders about the recommended issue resolution process if the parties do not agree on the contents of the data, especially if that data could lead to a claim of liquidated damages.



CM 401 Transition Plan Checklist

Elements to a Transition Plan

1. Develop Your Transition Plan. As mentioned above, this is obvious, but overlooked. Too often, project managers will rely on the vendor's project schedule as a transition plan, but vendors do not know or have any insight into the Agency's decision-making process. As a result, vendors don't know what needs to be done by Agency personnel to transition the project to the Agency upon completion or to another vendor to complete part of the project.

To develop a plan, consider things such as:

- What needs to be done to prepare to launch the project?
 - What will be handed over and by whom to the vendor?
- Are there any mid-project transitions?
 - If so, what needs to be done to prepare for the project?
 - What will be handed over and by whom to whom (the Agency or another vendor)?
- What needs to be done to prepare to complete the project and transition to the Agency?
 - What exactly will be transitioned to the Agency?
 - Who at the Agency will accept those transferred deliverables? (This is tied to the acceptance criteria in the Statement of Work.)
- What reports will Agency stakeholders need to track the progress of any transition?
- Who will be involved in the transitions (list these people from both the vendor and the Agency—although the names or titles might not be included in the contract)?
- Are technically skilled personnel part of the transition team at the Agency and vendor?
 - At the Agency, are the personnel in place for each of the key positions you outlined above?
 - At the vendor, are the personnel in place for each of the key positions you outlined above?
- The detailed timing of events including:
 - Assumptions parties are making about timing;
 - Key activities, milestones, and decision points;
 - Key dependencies (who is dependent on whom for what);
 - Performance criteria to be measured and achieved at each stage of rollout;
 - Go-live criteria;
 - Quality control and delivery management procedures; and
 - Testing methodology and criteria. (This is tied to the acceptance criteria in the Statement of Work.)
- Transition project management protocols, such as:
 - Progress review meetings
 - Reports (reporting)
 - Issues (dispute) resolution



CM 401 Transition Plan Checklist



Risk Assessment: The team also should outline potential risks to the transition. A risk assessment exercise at the inception of the relationship enables the parties to look at potential risk events before they occur and jointly design methods to overcome issues as they arise. The team can use the same Risk Monitoring Template that was introduced in Chapter 5, but it will focus on transition risks.

2. Develop a Process to Maintain Continuity of Resources

At the time of negotiating the contract, mutually identify a limited number of personnel who are designated as key personnel for both parties. These people are not necessarily listed in the contract.

The key is to maintain the same team from the initial solicitation process to completion, where possible. A common concern when transitioning work is the continuity of critical personnel. When team members change—at the Agency and at the vendor—the Agency can sometimes lose progress made towards completion of the project.

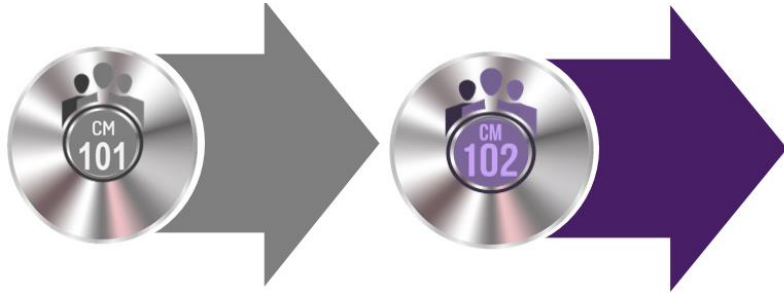
Another consideration is developing a process for communicating key personnel vacancies such as for illness or personal time away from the project.

3. Develop an effective communication campaign for the coming transition(s). Include the vendor's personnel.

A communication and change management process is crucial during transitions. Agency stakeholders may legitimately be unreceptive to changes that transitions may induce. If stakeholders do not understand why the change is necessary, or may be new to the project, they could delay (if not derail) transition phases.

Contract Management Training Program At-A-Glance Tool

REQUIRED:



Contract Management 101 (CM101) and Contract Management 102 (CM102) are required for all those who administer, monitor, or manage vendor relationships of a contract. Then those mentioned above must choose one of the following training tracks in order to meet the requirement. Work with your procurement professionals and supervisors in order to choose the training track that best fits.

CHOOSE ONE:

Modules in CM201 Training Track:

- M1: Chapter 4-Contract Requirements
- M2: Chapter 5-Contract Type
- M3: Chapter 7-Increasing Influence
- M4: Chapter 8-Developing Requirements
- M5: Chapter 9-Bidder Objections
- M6: Chapter 10- Contract Close Out

Resources found in modules (M1-M6):

- ✓ Requirements Checklist Goods (M1)
- ✓ Requirements Checklist Services (M1)
- ✓ Risk Monitoring Template (M2)
- ✓ Contract Summary Checklist Goods (M3)
- ✓ Contract Summary Checklist Services (M3)
- ✓ Kickoff Meeting Checklist (M3)
- ✓ Informal Process to Resolving Disputes (M5)
- ✓ Contract Closeout Checklist (M6)
- ✓ Lessons Learned Checklist (M6)

OR

Modules in CM301 Training Track:

- M1: Chapter 4- SLAs & KPIs
- M2: Chapter 5-Complex Risk
- M3: Chapter 7- Complex Management
- M4: Chapter 8- Modifications
- M5: Chapter 9-Dispute Resolution
- M6: Chapter 10- Closeout & Termination

Resources found in modules (M1-M8):

All of the resources from CM201, plus

- ✓ Requirements Checklist Hybrid (M1, M3)
- ✓ Contract Management Checklist (M3)
- ✓ Change Management Checklist (M3)
- ✓ When Issues Persist Checklist (M5)
- ✓ Contract Termination Checklist (M6)
- ✓ Contract Termination Language (M6)

OR

Modules in CM401 Training Track:

- M1: Chapter 4- Developing SLA's & KPIs
- M2: Chapter 5- Complex Risk
- M3: Chapter 6- Award Bidder Objections
- M4: Chapter 7- Complex Governances
- M5: Chapter 8- Complex Modifications
- M6: Chapter 9- Dispute Resolution
- M7: Chapter 10- Exit Management

Resources found in modules (M1-M7):

All of the resources from CM201 and CM 301, plus

- ✓ Strategic Relationship Requirements Tool (M1)
- ✓ Approach to Negotiating Redlines (M4)
- ✓ Bidder Issues List (M4)
- ✓ Negotiation-Action Tracking Spreadsheet (M4)
- ✓ Sample Governance Contract Terms (M5)
- ✓ Transition Plan Checklist (M6)
- ✓ Exit Management Plan Checklist (M7)