



## CM 301 Contract Termination Checklist

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**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?



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### Compliance or Safety Issues

- Is the performance issue impacting safety or compliance?
- Will the public be impacted as a result 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



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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.

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### Documentation

- Does the Agency have emails from the Agency to the vendor outlining performance issues?
- Does the Agency have any “official” memos or meeting notes from the Agency to the vendor outlining performance issues?
- Does the Agency have any 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 have on this day staff who can perform the services?
  - Does the Agency have on this day a vendor who can provide the exact goods described by the current contract?



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- How long would it realistically take for 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.

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