

Contract Termination Checklist

INSTRUCTIONS

Use this checklist to prepare your conversation with Agency stakeholders and the Contract Professional concerning any decision to terminate a contract. These questions will inform the Agency's position on termination and focus the conversation the Agency stakeholders, Contract Professional and legal staff have regarding the pros and cons associated with terminating the contract. The list is not exhaustive. The questions are just the beginning, so add applicable issues not listed.

The Contract

- Does the contract include language that if the Agency gives notice to the contractor of a defect or deficiency the contractor 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 contractor to develop a Corrective Action Plan to remedy the defect or deficiency?
 - Did you give the contractor 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?

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 contractor providing the required insurance, licenses, certifications, safety inspections before delivery, etc.?
- Is the contractor maintaining required professional designations etc. in the delivery of goods or services?

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- Is the contractor in compliance with regulations, laws or policies associated with this purchase?
- Is the Agency able to verify compliance?

Documentation

- Does the Agency have emails from the Agency to the contractor outlining performance issues?
- Does the Agency have any “official” memos or meeting notes from the Agency to the contractor outlining performance issues?
- Does the Agency have any official notices from the Agency to the contractor outlining performance issues?
- Has the Agency asked the contractor to cure the defect or deficiency in writing?
- Has the Agency worked with the contractor to develop a written Corrective Action Plan?
- After the timeframe to correct the performance issue, is the contractor 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 contractor who can provide the exact goods described by the current contract?
- How long would it realistically take for the Agency to transfer work to an internal staff person or an existing contractor?
- Would any other parts of the Agency or community it serves be impacted by a switch to internal staff person or existing contractor?
- (Refer to your contract) Does the agency want to:
 - Reserve a right to suspend the work
 - Withhold payments
 - Prohibit contractor from incurring additional costs during investigation of contractor compliance breach and pending corrective action if Agency terminates the contract?
- (Refer to your contract) Does the Agency want the contractor 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?