Washington State
DEPARTMENT OF
ENTERPRISE SERVICES

Enterprise Services Policy No. PRO-DES-080-02

Contract Management Procedure

Applies to: Any state office or activity of the executive 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. **This procedure applies to all competitive and non-competitive procurements.** For managing contracts that impact the services that have been historically provided by state employees, refer to Competitive Contracting Manual.

Authorizing sources:

- State Law RCW 39.26.080(2)
- State Law RCW 39.26.180(1), (3)

Effective date: August 1, 2023

Last update: N/A

Sunset review date: *5 years from effective date*

Approved by: Tara C. Smith, Director

PRO-DES-080-02A MANAGING GOODS AND SERVICE CONTRACTS

A. Contract Life Cycle Phase One (Pre-award): Drafts solicitation in cooperation with stakeholders, to align with agency business objectives during the contracting process (See Enterprise Services' sample solicitation development template).

Action by:	***Action:***
Agency Procurement Coordinator	**1. Plans the procurement, draft solicitation and the associated contract(s) to achieve the agency's business objectives during the contracting process. Key steps involve:** a. Defining business requirements (technical or functional) and identifying the contract scope of work. Agencies' scope of work should: i. Provide bidders with a clear understanding of the agency's needs to ensure goods or services meet the stated outcome and establish the limits of the resulting contract. ii. Provide sufficient information for bidders to: • Determine if they can provide what the agency needs at the time the agency needs it. • Decide whether responding to the solicitation is profitable. • Determine whether it can meet the requirements to be a responsible bidder. b. Conducting market research to identify available goods, services, and suppliers. Market research may include:

i. Information about the past, present, and potential service/item being acquired.
ii. Research about the industry as a whole.
iii. An extensive internet search, including various search terminology.
iv. A market analysis in trends, pricing, and service/product availability.

c. Creating an outreach plan and using the plan to conduct targeted outreach to remind small, diverse, and veteran-owned businesses to search WEBS for the contract opportunity they have received notification.
   i. Utilizes available resources to search for small, diverse, and/or veteran-owned businesses.
   ii. Targeted solicitation outreach includes but is not limited to market research; discussion with industry groups; research with Chambers of Commerce; contact business resource groups (BRGs); and a search of the OMWBE directory of certified firms.

d. Estimating contract value and budget. Consider any budget constraints, including special rules or requirements attached to funding. When estimating contract value:
   i. Involve staff with technical knowledge in budget analysis.
   ii. Consider the total value over the entire life of the contract(s). Where applicable, include:
      - Any costs associated with the disposal of goods.
      - All aspects required for the full delivery of the goods or services.
      - Options to purchase additional goods or services.
      - Options to extend the term of the contract.
      - Payment of any premium, fees or commissions to the supplier, and any other form of remuneration or payment due to the supplier or to a third party or any interest payable.
      - Any related revenue streams the contractor will receive.

e. Conducting risk analysis to ensure that the solicitation aligns with the agency's business objectives during the contracting process; identifying strategies to reduce unnecessary barriers and mitigate potential risks to the agencies (see sample Contract Risk Assessment, Mitigation Strategies and Monitoring Checklist); and determining the appropriate procurement policies to promote social procurement and achieve maximum value. In conducting a risk analysis, the procurement coordinator should:
   i. Confirm that all terms and conditions are appropriate to protect the state's interests. See included Model Contract Terms section for details.
   ii. Use the appropriate procurement method.
   iii. Include the requirement for the appropriate industry licenses, if applicable, for the contractor to perform the contract.

	iv. Ensure that the agency is requiring appropriate insurance coverage in a way that it does not restrict competition. v. Include delivery and inspection requirements. vi. Include the appropriate procurement bonds and bonding requirements. See RCW 39.26.190, DES Policy DES-190-00. vii. Outline performance criteria (see included Model Contract Terms section for details). f. Preparing the solicitation and contract documents following the agency's approval process.
Agency	**2. Appoints a contract manager, whose role is to ensure the contractual business objectives are met.** a. Appoints a contract manager (if the procurement coordinator who developed the solicitation will not be assuming the contract management role) to coordinate the administration of the contract, which includes contract monitoring, tracking, and approval of deliverables, reporting of contract performance, and post-contract procedures. b. Confirms the appointed contract manager has completed the appropriate module of the contract management training.
Agency Procurement Coordinator	**3. Includes terms, provisions, and procedures in the solicitation to ensure agency enters into performance-based contract and ensure effective and efficient management of contracts.** a. Uses the sample model contract terms provided by Enterprises Services or the agency's Assistant Attorney General approved terms. If using the language in the template in drafting the contract, ensures the language is consistent with what is provided in the model contract. The model contract terms ensure contract performance, and should: 1. Outline performance measures and measurable benchmarks. Includes relevant performance criteria (i.e., milestones, deliverables, and objective metrics) used to measure the bidder's performance) to ensure the agency enter into a performance-based contract(s). i. Works with agency program area(s) or business unit(s) to determine the appropriate performance criteria. Performance criteria should help agency to: • Establish delivery standards, such as quality, responsiveness, and/or efficiency. • Identify deliverables and performance measures or outcomes. • Tie at least a portion of contractor's payment, contract extensions, or contract renewals to the achievement of specific measurable performance standards and requirements.

- Determine whether the contract is meeting expectations and establish the basis for corrective actions and claiming damages for poor performance.
- Identify and correct problems. See RCW 39.26.180(3).

b. Promotes compliance with the Supplier Diversity Policy requirements (to be linked) and RCW 39.19 requirements by:
   i. Outlining information in the solicitation and taking actions to promote participation of minority and women-owned businesses in order to meet agency contracting goals (RCW 39.19.030(4)).
      - Works with the Office of Minority and Women Business Enterprises (OMWBE) to have information about procurement and contract opportunities available on the OMWBE website.
      - Allows enough time for bidders to respond and submit bids.
      - Utilizes community-based networks to create awareness of the agency contracting opportunities.
      - Unbundles contracts by breaking projects into smaller possible pieces.
      - Engages with minority and women-owned businesses through substantial outreach efforts and in partnership with external organizations.
      - Emphasizes the importance of participation of minority and women-owned businesses during pre-bid conferences.
   ii. Including information to ensure an apparent successful bidder(s) will follow the contract provisions (RCW 39.19.090(2)).
      - If the responsible bidder does not meet the agency minority and women-owned business contracting goals established for a particular contract (RCW 39.19.070), award the contract to the next lowest responsible bidder; or reject and obtain new bids.

c. Includes information, criteria, factors, and considerations for awarding the contract.
   i. Outlines the procedures that will be followed and award factors that will be used to determine the contractor's qualifications and ability to perform the contract. The award factors should reflect contract requirements and have their relative weights. The award factors may include, but not be limited to:
      - Technical competence of the contractor and its key personnel.
      - The contractor's past performance with similarly scope of contract(s). This should be determined through reference checks.
      - The contractor's plans and ability to deliver the scope of contract.

- Adequate financial resources to perform the contract, or the ability to obtain them.
- Compliance with labor requirements, tax commitments and applicable safety record(s), if applicable
- The contractor's past performance in utilizing disadvantaged business enterprises and small business entities.

Note: Special factors may be desirable when experience has demonstrated to agencies that unusual expertise is needed for adequate contract performance.

ii. Outlines the procedures and criteria for contract amendments. Throughout the term of the contract, it may be necessary to make changes to the contract. These changes can be minor administrative changes, or they can be substantial changes.
   a. Examples of administrative changes include:
      - Changes in billing instructions or address.
      - Corrections of typographical errors not affecting the substance of the contract.
      - Changes as permitted by the specific clauses.
      - Changes in agency personnel assigned to manage the contract.
   b. Examples of substantive changes include:
      - Change in the price(s) of the contract.
      - Change in delivery schedule.
      - Change in the quantity.
      - Change of nature of deliverables, for example, the specification.
      - Change in the scope of work.
      - Change of key personnel.
      - Change of any terms and conditions.
      - An extension or renewal of the contract not previously contemplated by the contract.

iii. Outlines in the solicitation the criteria and metrics determined with stakeholders during the planning stage to measure contract performance.
   a. Confirms the criteria and metrics align with the goals and objectives of the contract by sharing the draft solicitation with stakeholders.

iv. Includes provision(s) to prohibit contractors from charging additional costs to agency to access data generated under the contract. Emphasizes that contractors under such contract must provide access to data generated under the contract to the state.

v. Includes procedures for managing complaints and protests in the solicitation (see PRO-DES-17-00). Also see the Small Agency Procurement Support Services' solicitation development template with procedure on managing complaints and protests.

vi. Describes in the solicitation how penalties will be administered if the contractor failed to comply with the terms, conditions, and requirements of the contract, including non-compliance with chapter 39.19 RCW (RCW

39.19.090, and the applicable federal standards (RCW 39.26.180(e). The penalties may include:

a. Withholding contractor payment.
b. Holding the contractor responsible for the costs of employee staff time that must be expended to bring the contract into substantial compliance
c. Debarring the contractor for a period between one and three years.
d. Suspending or terminating the contract or subject the contractor to civil penalties of up to 10 percent of the value of the contract or up to $5,000 for each violation.

vii. Outlines alternative dispute resolution (ADR) provisions and process the agency and the contractor(s) will use to resolve contract disputes. ADR procedures are more efficient and cost-effective than litigation. It allows the agency and the contractor to preserve future business relationships. Negotiation, mediation, arbitration, and dispute resolution board are the most common ADR methods. Agencies should involve their legal services for guidance and to determine the appropriate ADR method for a given contract.

a. **Negotiation:** This is a voluntary process by which agencies and contractors attempt to reach a mutually satisfactory agreement through discussions. The process can be facilitated by a neutral person to reach an agreement.
    - Negotiation includes a written statement of the issues to the contractor.
    - Any decisions from the negotiation are not binding until ratified in a new contract or contract amendment.
    - A decision from the negotiation may result in withholding of payment or termination of the contract.

b. **Mediation:** This is a non-binding ADR method where the agencies and contractors enter the resolution process with a good faith intention to settle a dispute. The mediator helps the agency and the contractor to understand each other's position and ask questions to help both parties settle the dispute.

c. **Arbitration:** is quasi-judicial and more structured than negotiation or mediation. Unlike mediation, arbitration results in a private, binding, court-enforceable decision. The decision of the arbitrator can be appealed to a court.
    - Both the agency and the contractor involve their legal counsel.
    - The final decision is ratified in a new contract or an amendment to the original contract.

d. **Dispute Resolution Board:** the agency and the contracting party will establish an alternate board typically comprising three independent and impartial persons selected by the parties.

viii. Includes criteria for terminating contracts for not achieving performance standards and for other reasons that may be in the best interest of the state.

	a. Typically, non-performance issues that could lead to contract termination include: i. Missing a scheduled delivery date and time. ii. Providing inferior goods or unauthorized substitutions. iii. Altering contract pricing. iv. Failure to deliver v. Using unauthorized subcontractors b. Sample termination provisions the agency may include in the contract are provided. See samples contract termination language. ix. Outlines other post contract award procedures related to contract transitioning, kick-off meeting, monitoring, amendment, documentation, payments, and other post contract award areas. d. Incorporate all applicable enterprise procurement policies and executive orders (EO), including but not limited to, environmental and EO 18-03 policies.
Agency Procurement Coordinator	**4. Develops a contract management plan for each contract.** a. Works with the contract manager to develop a contract management plan using the contract management checklist to ensure contract requirements, terms and conditions are followed, and parties fulfill contractual obligations. Includes in the contract management plan: i. Contract objective(s), deliverables, charges against contract price, quality against key performance indicators and/or agreed standards, contractor's overall performance, and other items as required by program or funder if applicable. ii. The contract monitoring requirements to ensure that all aspects of the contract are being properly performed and that performance standards are being achieved. Contract monitoring requirements may include, but are not limited to: • Periodic contractor reporting • On-site reviews and observations • Invoice reviews • Audit report reviews • Client surveys • Other periodic contact with the contractor iii. Performance measures to track, compare performance standards, and identify areas of contract performance improvement. An agency decision about the metrics to use will depend on the goals and objectives of the program, funder, or contract. iv. Roles and responsibilities of each member of the contract management team, including the contract manager. v. Critical dates and deadlines. vi. Payment plan. Ensures timely, accurate, and cost-effective payment of obligations to contractor(s). See SAAM 85.32.50.

vii. Review meeting schedule.

viii. Contract compliance requirements.

ix. Defined risks, issues, and mitigation strategies (see sample Risk Assessment, Mitigation Strategies and Monitoring Checklist).

- Works with agency stakeholders to identify potential risks and develop the risk mitigation strategies.
- Includes the appropriate terms and conditions related to risk areas regarding schedule, shipping, indemnifications, performance standards, testing, approvals, acceptance criteria, confidentiality, dispute resolution, and health and safety are included in the contract documents.
- Ensures the statement of work addresses the identified issues.

x. Contract close out (see sample Contract Closeout Checklist) details to support the contract manager in carrying out contract closeout activities. Include details to ensure that:

- All payments to the contractor(s) have been made.
- Completion of all administrative actions.
- All issues are resolved.
- The contract file has all the necessary documentation.
- All deliverables, including reports, have been delivered and accepted
- All agency's property, if any, has been returned.

xi. Exit strategy (see sample Exit Management Plan Checklist) to mitigate risks to the agency when the contract relationship ends and reduce the likelihood of legal issues. Confirm the exit strategy addresses, among others, the:

- Key actions and responsibilities. Include the roles, duties, and expectations of the agency and the contractor.
- Risks associated with interruption in business operations for the agency.
- Communications plan for all impacted business units.
- Termination notices.
- Exit transition period. This is the time from the date of termination notice until the date when the exit is complete.
- Transfer of knowledge and information about what the contractor must transfer to the agency.

b. Shares a copy of the contract management plan or checklist with the contract manager (if the procurement coordinator will not assume the role of contract manager) and all agency staff involved in managing the contract. The contract manager will use the contract management plan or the checklist as a tool to manage the contract.

B. Contract Life Cycle Phase Two (Award): Establishes a contract that accurately reflects the agreements between parties.

Action by:	***Action:***
Agency Procurement Coordinator	**1. Contract Negotiation:** a. Evaluates bids following the process outlined in the advertised solicitation and agency guidelines. b. Determines and announces the apparent successful bidder(s) upon completing bids evaluation, including reference checks. c. Follows the DES POL-DES-170-0 to manage any protest(s) received. d. Develops a negotiation plan if negotiation is required. Outlines the items to be discussed during the negotiation process and the desired outcomes.
Agency	e. Appoints the individual or the team to negotiate the contract. Includes subject matter experts if a negotiation team is required. Depending on the issue(s) the agency intends to negotiate, the subject matter experts may include the procurement coordinator and professionals with financial and/or technology backgrounds. 1. Ensures the individual or all team members negotiating the contract complete and sign a confidentiality and conflicts of interest disclosure agreement to avoid any conflicts of interest and protect the integrity of the process. i. Potential conflicts of interest may exist if any individual or their immediate family member: • Is currently employed by the contractor or was in the last 12 months. RCW 42.52.080(1). • Has a financial interest in the outcome. • Has accepts gifts, loans, or monetary compensation from the contractor. • Holds equity interests, including stock options in the contractor's firm. • Has received any items of economic value.
Negotiation Team or Agency-Appointed Individual	f. Utilizes the negotiation plan to negotiate contracts with terms and conditions favorable to the state. Contract negotiations should not be used to allow the bidder(s) to: i. Change a nonresponsive bid into a responsive bid. See RCW 39.26.160 (6). ii. Substantially change the scope of the original solicitation or increase the value of the contract.
Agency Procurement Coordinator	g. Reviews and obtains approval of all the negotiated terms and conditions. h. Incorporates into the final contract all the changes resulting from the negotiations before proceeding to contract execution.

Action by:	***Action:***
	2. Electronic Signatures: a. Obtains all applicable signatures. 1. The contractor's signature is confirmation that the contractor has read and understood the requirements, terms, and conditions of the contract. 2. Contract may be signed using electronic signature, which could be any of the following methods. Work with the agency assigned AAG and consult the Office of the Chief Information Officer's (OCIO) for guidance on electronic signature method to use. i. A typed name on the contract ii. An image of a handwritten signature iii. A handwritten but digitally captured signature b. Documents the signed contract in the contract file. c. Records solicitation results in WEBS **3. Transition:** a. Ensures the agency-appoint contract manager and other agency staff involve in the administration of the contract receive a copy of the signed contract, if the procurement coordinator will not be managing the contract.

C. Contract Life Cycle Phase Three (Post-Award): Ensures each party performs according to the agreed upon obligations.

Action by:	***Action:***
Contract Manager	1. Receives, reviews, and understands the terms and conditions in the contract and the contract management plan. • Sets up internal payment procedures, tracks invoices and payments to the vendors, and tracks the contract budget. 2. Schedule a kick-off meeting with the vendor's key representative at the start of the contract. Utilizes a kick-off meeting checklist (see sample Contract Kick-off Meeting Checklist) to conduct the meeting. The purpose of a kick-off meeting is to align the agency's understanding and the contractor's understanding of the contract requirements. a. Reviews the contract management plan with the contractor(s) and all agency staff involved in managing the contract during contract kick-off meeting. b. Reviews the following items during the contract kick-off meeting: i. Scope of the contract (what the agency is buying). ii. Contract terms and conditions, including any special contract provisions iii. Technical and reporting requirements of the contract.

Action by:	***Action:***
	iv. Applicable contract administration procedures, including how the agency will monitor and measure progress. v. Parties' rights and obligations. vi. Contractor performance evaluation procedures vii. Potential contract problem areas and possible solutions. c. Ensures both the agency and the contractor(s) have a common understanding of their obligations and how to meet the deliverables of their contract. 3. Monitors contract performance, using the contract management checklist to ensure compliance with the terms and conditions of the contract, schedule, health, and safety requirements, and ensure that goods and services received from the contractor fulfill the contract requirements. a. Ensures monitoring activities include periodic contract reporting, on-site reviews and observations, invoice reviews, audit report reviews, client surveys and other periodic contact with the contractor. 4. Follows agency guidelines and procedures for receiving goods and performing services during the contract performance. a. Inspects and evaluates all goods and/or services at the time of receipt to determine whether the goods and/or services comply with the contract under which they were purchased. 5. Follows agency guidelines and procedures to ensure contractor(s) are paid in a timely fashion for the goods delivered or services performed and per the terms and conditions of the contract. 6. Applies agency guidelines and procedures to manage revisions or changes to the contract. Ensures any amendment is in line with the contract change clause, and the request is within the scope of the contract when the agency requires a contract amendment. a. Conducts analysis to ensure cost associated with the amendment will not increase cost of the contract beyond the amount authorized (or the percentage authorized if applicable) within the period specified in the contract. b. Confirms funds are available if such amendment will result in cost increase and if applicable. c. Confirms the contractor has not added any qualification or stipulation that will change the terms and conditions of the contract. 7. Identifies and promptly resolves issues as they occur. Works in good faith with the contractor to: a. Resolve the day-to-day issues without the involvement of the Department of Enterprise Services (DES).

Action by:	***Action:***
	i. Works with DES' assigned Procurement Coordinator or Contract Specialist to resolve the Statewide contract issues that the agency is not able to resolve. ii. Documents disputes and keeps them as a part of the contract file. 8. Suspends or terminates the contract when issues persist and cannot be resolved, as outlined in the contract. See sample Contract Termination Checklist. a. The agency's contract manager should contact their agency's contract administrator at the first sign of a possible misalignment in performance with the Contract. b. If the contract manager does not have the authority to suspend or terminate the contract, the contract manager should notify the appropriate authority of the contract performance issue and recommend suspension or termination. c. If a non-performance issue occurs, agencies should first attempt to do the following before terminating the contract: i. Review the appropriate clause(s) related to performance deficiencies. ii. Follow a formal corrective action process to resolve any dispute, including providing a notice to cure to the contractor. When a dispute arises, working in good faith with the contractor to resolve the dispute. iii. Depending on the type of contract, agencies may exercise one of the following options to recover costs for nonconforming supplies or services; provided the options are included in the resulting contract: ▪ Require the contractor to re-do the deficient work at its own expense. ▪ Award the contract to another contractor at the expense of the delinquent contractor. ▪ Other remedies allowed by law. **NOTE:** Suspension and/or termination is a complex decision. Agencies should only suspend or terminate contracts after sufficient analysis and consultation with agency leadership and the Assistant Attorney General/agency legal counsel. iv. Maintains a contract file for all agency contracts. Files must contain relevant documentation to show that agency managed contract performance well. 9. Performs contract close out (see sample Contract Closeout Checklist). a. Confirms that all deliverables, including reports, have been delivered and accepted as compliant with the contract requirements. b. Determines that all payments to the contractor(s) have been made. c. Confirms all administrative actions have been performed. d. Ensures all issues have been resolved. e. Confirms that the contract file has all necessary documentation. f. Determines that all the agency property, if any, has been returned. g. Ensures all information, documents, and issues related to the contract are saved in the contract file or are provided to the agency unit responsible for maintaining contract information.

Action by:	***Action:***
	10. Documents lessons learned using a checklist (see sample Lessons Learned Checklist). The documentation will include the following items and other information related to the delivery of the contract: a. The goods delivered or services provided by the contractor(s) b. Contractor's compliance. c. Invoicing and payment.

Resources and Related Policies

Frequently Asked Questions (FAQ)
WA-State Contract Management Manual
DES-170-00 – Complaints and Protests
Competitive Contracting Manual

Appendices

There are no appendices associated with this policy

History

N/A

Definitions

Alternative Dispute Resolution means a non-judicial method of handling conflict between an agency and a contractor, including but not limited to mediation, arbitration, neutral evaluation, negotiation, and conciliation.

Contract means any written commercial contract or other agreement that creates a binding obligation upon agencies.

Contractor means an individual or entity awarded a contract with an agency to perform a service or provide goods.

Contract Administration means the management of all the actions that must be taken to ensure compliance with the terms of the contract after the award of the contract.

Contract Data, as defined in House Bill 1521, means all information that supports the findings, conclusions, and recommendations of the contractor's reports, including computer models and the methodology for those models.

Contract File means a file (electronic or hard copy – either or both?) containing a copy of a contract and documentation of all contract management actions.

Contract manager means a trained agency staff or individual assigned the responsibility of managing contracts on behalf of the agency.

Contract Management Plan means a document developed by the agency that details all the key information about the agency contract will be managed to ensure compliance with the terms and conditions during the life of the contract.

Dispute means a contractual disagreement or misunderstanding between an agency and the contractor specific to contract provisions or language.

Kick-off Meeting means a meeting held by an agency with a contractor before commencing contract performance to ensure agency and contractor understand the contract requirements.

Market research means the process of defining the agency specific need(s) and determining the most appropriate acquisition method for a given procurement. Market research helps to make most decisions about a procurement and ensure the key components necessary to manage the contract after award are incorporated prior to solicitation. By conducting market research, agencies are able to examine available sources of information to find available goods, services, and sources of supply that may help to fulfil the identified business requirements.

Agencies should not rely exclusively on stakeholders' knowledge. Instead, should actively engage in market research by accessing informational resources, such as the Internet, industry experts, consultant reviews, advertisements, cooperative procurement entities, or industrial publications. Agencies should also consult with other public entity with similar purchasing needs.

The level of effort put into market research should align with the complexity of the procurement. In conducting market research, agencies should answer the questions, including but not limited to:

- What is the project budget?
- Is a Statewide contract currently in place for the good or service to be procured?
- Who are the major vendors that could supply the good or service?
- How do other jurisdictions contract for the good or service?
- What is the estimated cost/price other government jurisdictions have paid for similar scope of good or service to be procured?
- What insurance clauses have been used in other government jurisdictions for the type of good or service to be procured?
- Is additional delegation of authority request required to be submitted and approved by Enterprise Services Director?
- Are there small, diverse, or certified veteran-owned businesses capable of delivering the good or performing the service?
- Is there a meaningful choice of supply in the market?

Performance-Based Contract means a results-oriented contracting method that focuses on the outputs, quality, or outcomes that may tie at least a portion of a contractor's payment, contract extensions, or contract renewals to the achievement of specific, measurable performance standards and requirements.

Post-award means 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.

Pre-award means 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.

Procurement supervisor means the agency staff in charge of coordinating a procurement team to develop procurement and contracting strategy. The procurement supervisor reports to the procurement manager.