

0610.04 Purchase Termination/Cancellation – *Post-Award*

Issued: October 31, 2007

Revised: April 18, 2012

SUBJECT: Purchase Termination/Cancellation – *Post-Award*.

APPLICATION: Executive Branch Departments and Sub-units.

PURPOSE: To prescribe the process for termination/cancellation of a non-delegated authority purchase.

CONTACT AGENCY: Department of Technology, Management and Budget (DTMB)
Procurement

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SUMMARY: These procedures apply to termination/cancellation of a contract or purchase order issued by the Department of Technology, Management and Budget (DTMB) Procurement. These procedures are mandatory for Executive Branch Departments unless specifically provided otherwise by statute.

The state may cancel/terminate a Purchase Order (PO) or Blanket Purchase Order (BPO) without further liability or penalty to the state, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons according to the parameters identified within the PO or BPO contract:

- Cause.
- Convenience.
- Non-Appropriation.
- Criminal conviction.
- Approvals rescinded.
- Unacceptable pricing/terms on a vendor-submitted request for modification.

The Vendor Performance module in ADPICS is an important tool utilized in establishing a record of vendor performance, as well as providing documentation necessary for contract management. Documentation supporting performance concerns is required to pursue termination for material breach.

All procurement activities under this procedure are subject to review/audit by DTMB. All violations by departments may result in the loss of delegated authority.

**APPLICABLE FORMS
AND PROCESSES:**

Right to Cure Letter
Termination/Cancellation Letter
Internal Agency Policies/Procedures
MAIN Electronic Documents & Processes:

- Vendor Performance Record (PCHL5260)
- Vendor Performance Disposition (PCHL5270)
- Vendor Performance Inquiry (PCHL5280)

- Purchase Cancellation (PCHL8500)
- DTMB Procurement Procedures & Policy Letters:
- Signature Authority Letter (Purchasing Operations PL127)
 - Service Level Agreement Letter (SLA) for solicitations and amendments
 - Procurement Internal Procedures for contract compliance monitoring, vendor performance, contract change processing, termination/cancellation and closeout.

Procurement documentation:

- Notice of Contract/Blanket Purchase Order (BPO) (PCHL2342) with all executed Contract Change Notices (CCN)
- Purchase Order (PO) (PCHL2340) with any posted Advices of Change (AC)
- Direct Purchase Order (DPO) (PCHL2360) with any posted changes
- Documentation surrounding vendor performance communications, formal and informal
- Documentation surrounding contract change request prompting termination
- Documentation surrounding specific reason for termination request
- Contract Management Toolkit (optional for purchases at or below \$25,000):
 - Project Assessment Report (PAR)
 - Project Plan
 - Kick-Off Meeting Record
 - Contract Compliance Report
 - Contract Closeout Report

PROCEDURES:

Agency and DTMB Procurement Approvals:

- Internal and external approvals must be obtained and documented according to agency policies, Executive Directives, Executive Orders and procedures, including provisions surrounding signature authority.

Agency:

- Must follow their department's procurement policies and procedures, recognizing that the policies and procedures of the delegating authority (DTMB) supersede those of the department in the event of a conflict.

Department/Agency Contract Compliance Inspector (CCI):

- Identifies that a problem exists with a vendor's performance relative to an existing contract (PO or BPO).
- Reviews the terms, conditions and specifications of the contract to verify that the expected level of performance is a requirement. Note: It is important to understand the contract and know the obligations of both the Contractor and the state.
- Follows the process outlined in the Administrative Guide for vendor performance (see procedure 0610.03 Vendor Performance), keeping the Procurement Contract Administrator (CA)/Buyer apprised of results of resolution attempts and in the event of continued unsatisfactory performance, the desire to initiate termination/cancellation proceedings for material breach. There may be situations where a contract must be immediately terminated and there is not

sufficient time for multiple iterations of the formal complaint process; for example, when public security and safety are negatively impacted. In these cases, the Procurement CA/Buyer may issue immediate notice of termination. Documentation supporting the action shall be maintained in the contract file.

- Provides Procurement CA/Buyer with all requested documentation on contract performance, including Contract Compliance Reports recording performance issues, in cases where termination/cancellation for material breach is requested.
- Provides Procurement CA/Buyer with all requested documentation regarding requests for termination for any other reason, convenience, felony conviction, non-appropriation, unacceptable change request or rescinded approvals.

DTMB Procurement:

- Confirms that the process outlined in the Administrative Guide for vendor performance (see procedure 0610.03 Vendor Performance) has been followed for all performance issues occurring prior to the request for termination/cancellation for material breach.
- The Procurement CA/Buyer maintains the responsibility for investigating all matters at issue thoroughly before determining an appropriate disposition. This includes a review of all documentation surrounding the issue as presented by both the agency and the contracting vendor. As part of this review, Procurement will assess the level to which each party met, or failed to meet, their contractual obligations and how this impacts the issue under review.
- Procurement shall take the necessary action related to termination/cancellation of a contract, issuing a stop work order, or the suspension or debarment of a vendor. This action is taken after consideration and discussion of available alternatives with the issuing agency. This action applies to POs and BPOs regardless of the reason for the termination request (non-appropriation, felony conviction, convenience, etc.).
- Procurement will request Attorney General evaluation, review and involvement when necessary prior to contract termination.
- In the event Procurement determines that there was a material breach, the CA/Buyer, Buyer Manager or Division Director will issue a right to cure letter. The right to cure letter will provide notice to the vendor identifying the actions which must be taken and the prescribed time period to cure deficiencies and prevent contract termination/cancellation.
- Procurement will confirm with both the agency and the vendor whether the conditions were successfully met within the designated time period, prior to issuing a termination letter.
- In the event the conditions are adequately satisfied, the PO/BPO will remain in effect, with any approved modifications incorporated through the CNN's or AC's Advice of Change (see Administrative Guide Procedure 0610.02 Advice of Change) and associated updates made to Contract Compliance Report, Project Plan and Contract Closeout Report.
- In the event the conditions are not adequately satisfied within the necessary time period as stated within the Right to Cure letter, Procurement may issue a letter of termination/cancellation, stating the effective date of the action and outlining any rights and/or obligations of the vendor resulting from the action, and provide an update summary to the agency for the Contract Compliance Report, Project Plan and Contract Closeout Report.
- In cases of termination/cancellation for reasons other than material breach, Procurement will issue the termination/cancellation letter upon review of documentation supporting and verifying the correctness of the course of action and update the Contract Management Toolkit forms and documents.
- Procurement will maintain copies of all final documentation surrounding the review and termination/cancellation action within the PO/BPO contract folder.

Authority:

- Public Act 431 of 1984, as amended (governing authority) with accompanying agency Memorandums of Understanding (MOU).
