

CHAPTER 10

Contracting

10.1. Contract Defined

A contract is an agreement between two or more parties that creates a legal obligation to do, or not to do, a particular activity. A contract sets expectations for the parties. For purposes of this section, the terms “agreement” and “contract” have the same meaning.

10.2. Authority to Contract

The Enterprise Procurement Director is the State agent authorized to enter into contracts on behalf of the State. The Enterprise Procurement Director has the authority to delegate this authority. Only authorized State personnel designated by the Enterprise Procurement Director have the authority to bind the State.

10.3. Procurement Contracts

10.3.1. Contract Types

There are three types of contracts utilized by the State: (1) multi-year contracts, (2) contracts that are issued for goods or services for a one year or less, and (3) contracts that are issued for a one time purchase. Other than the exceptions stated in Section 10.2.2, all purchases of goods or services must be made through one of the methods identified in this Section 10.2.

10.3.1.1. Multi-Year Contract

A multi-year contract is a written contract issued for a good or service to be provided for more than one year, or a State contract that contains an option year(s) that extends the contract beyond the one year.

Note: a purchase order release, or any other ordering document, issued subsequent to the execution of a multi-year contract is not a contract, but rather it is the ordering method used for a multi-year contract.

10.3.1.2. Purchase Order Contract (One Year or Less Purchase)

If a multi-year contract is not issued, a one year contract for the purchase of goods or services used may be made through a written contract most commonly known as the purchase order contract. Some agencies may use terminology different than a “purchase order contract” however, the process to procure the goods or services for these purchases are the same.

10.3.1.3. Purchase Order Contract (One-Time Purchase)

If a multi-year contract is not issued, a *one-time purchase* of a good or service may be made through a written contract most commonly known as the purchase order contract. Some agencies may use terminology different than a “purchase order contract” however, the process to procure the goods or services for these purchases are the same.

The contract types noted above include **third party contracts** - a contract that requires a contractor to provide a good or service, and payment for the good or service is made through fees paid by a third party; and **revenue generating contracts** - a contract where the contractor is providing the good or service, and the State will receive revenue from the contractor based on its use of the good or service (e.g. procurement card contract which provides a rebate to the State based on usage, prisoner phone system that provides a rebate to the State, infant formal program).

10.3.2. Alternative Purchasing Methods – Exception to Standard State Contract

In limited circumstances, as identified below, a standard state contract is not required for a purchase.

10.3.2.1. Procurement Card

A procurement card can be used to purchase goods under \$2,500, or above \$2,500 with advance written approval. Procurement card purchases must be made in accordance with the [Administrative Guide procedures](#) and the [Procurement Card Program cardholder and agency manuals](#).

10.3.2.2. Non-Standard State Contract Purchase

A verbal (telephone or in person), electronic (email), or online purchasing method may be used for any purchase less than or equal to \$2,500, that is not on a multi-year, or on a purchase order contract.

Note: Policy regarding payment methods is located in Chapter 11.

10.3.3. Memorandum of Agreement and Memorandum of Understanding

A memorandum of agreement and memorandum of understanding are not appropriate contracting vehicles for purchases made pursuant to Public Act 431 of 1984. Furthermore, a memorandum of agreement and memorandum of understanding must not be used to circumvent Public Act 431 of 1984 and the competitive bidding process.

10.4. Essential Components of a Standard State Contract

10.4.1. Essential Components of Standard State Contracts

All contracts must include, and clearly identify the following:

10.4.1.1. Parties to the Contract

The legal business name of the parties to the contract must be identified in the contract.

- 10.4.1.2. **Contract Term**
The contract term – the initial contract term (fixed start and end date), and option years, if applicable, and the renewal process must be identified in the contract.
- 10.4.1.3. **Specifications or Statement of Work**
The specifications or statement of work must clearly define the scope of the work to be performed or provided by the contractor and the State, the responsibilities of the parties, the deliverables, the milestones and timeline for performance, acceptance criteria, applicable service level agreements, and the associated payment stream.
- 10.4.1.4. **Contract Price, Delivery Terms, Payment Methods, and Payment Terms**
The contract price must be clearly articulated in the contract, and if appropriate, any index based pricing formula and mechanism. This will minimize risk, prevent overpayment and reduce contractor payment disputes, and in the event of a breach, the price will be used in determining damages. The contract price may be expressed, for example, as a unit, an hourly price, or a firm fixed price.
- The contract must also include delivery terms (e.g. carrier, freight charges, place of delivery, and time of delivery), the ordering method, for example, telephone or email orders, and the method in which the vendor will receive payment (e.g. electronic funds transfer, or procurement card).
- The contract payment schedule must be identified and written to maximize value to the State and minimize risk. Payment for goods or services should be made when the State has received value – receives and accepts the goods or services.
- 10.4.1.5. **Terms and Conditions**
All provisions in the contract, including attachments, addendums, schedules, etc. are considered contractual terms or requirements. Each term gives rise to a contractual obligation, breach of which can result in litigation. Contracts will also include a “Terms and Conditions” section, and may be titled, for example, “Standard Contract Terms”, “Software as a Service Terms”, or “Custom Software Development Terms.” The “Terms and Conditions” section of the contract define legal and business terms associated with the specific purchase.
- 10.4.1.6. **Authority to Bind the State**
An individual’s authority to contract is limited to those who have been authorized in writing by the Enterprise Procurement Director to purchase on behalf of the State.

10.5. Contract Development and Execution

10.5.1. Contract Development

At the conclusion of a solicitation and prior to the contractor's performance, the State and contractor must execute a contract, as described in 10.4.2. Contract Assembly and Execution, that encompasses the entire agreement. The documents must reflect the negotiated requirements, milestones, timeline for performance, associated payment stream or price, and the applicable "Terms and Conditions."

All documents provided by a contractor in the solicitation process must be reviewed and evaluated to determine if the contractor's documents or revised language will be attached or merged into the final contract. "All documents" include subscription agreements, licensing agreements, participating addendums, disaster recovery plans, etc.

Any negotiation to the "Terms and Conditions" provided in the solicitation must be performed by an individual having the authority to modify "Terms and Conditions". The Central Procurement Office is responsible for the review and approval of contractor exceptions to the terms and conditions in the formal competitive bidding process (see Chapter 5), and will provide assistance, at the request of an agency, for the negotiation of terms and conditions in an informal bidding process.

10.5.2. Contract Assembly and Execution

Contracts must only be processed and executed by the State procurement professional and contractor personnel who have authority to purchase. The contract assembly and execution process is determined by the contract type (i.e. multi-year contract, and purchase order contract).

10.5.2.1. Multi-year Contract

The documentation for a multi-year contract must contain and be assembled as follows:

1. Cover Sheet and Signature Page (State and Contractor signatures are required on all contracts)
2. Terms and Conditions
3. Schedule A - Statement of Work or Specifications
4. Attach any additional documents and title them as appropriate - Schedules B, C, D, etc.
5. Title the last Schedule "Pricing" (e.g. Schedule D – Pricing). When possible use a matrix to link milestones; deliverables; timeline for performance; payment schedule; and pricing.

Once the contract is assembled it must be sent to the contractor for review and signature. Upon receipt of the signed contract, the State will countersign. The contract is considered executed when the contract is signed by the State; however, the contractor must not begin performance until the State provides the contractor with notice to begin performance, as identified in the contract. Contractor submitted documents received after contract execution will not be

incorporated into the final contract unless approved by the purchasing professional, in writing, and incorporated into the contract by the execution of a change notice.

10.5.2.2. Purchase Order Contracts

The documentation for a purchase order contract must contain and be assembled is as follows:

1. Purchase Order Contract
2. Terms and Conditions
3. Additional Documents (including statement of work, quote, etc.)

Once the contract is assembled it should be sent to the contractor for review and contractor signature.

10.6. Establishing the Multi-year Contract and Purchase Order Contract in MAIN

10.6.1. Contract Transactions in MAIN

The transaction process associated with multi-year contracts and purchase order contracts for commodities and services is located in [Part II – Accounting and Financial Reporting Policies, Chapter 23 of the Financial Management Guide](#).

10.6.2. Commodity Codes

Regardless of the dollar value, all contracts (by line item) must be coded with the [applicable commodity code](#) related to the good or service. Commodity codes specified in category plans must be used where a category plan is in place. Information on Category Plans can be found on the [Enterprise Procurement Intranet site](#) under the Category Management button.