

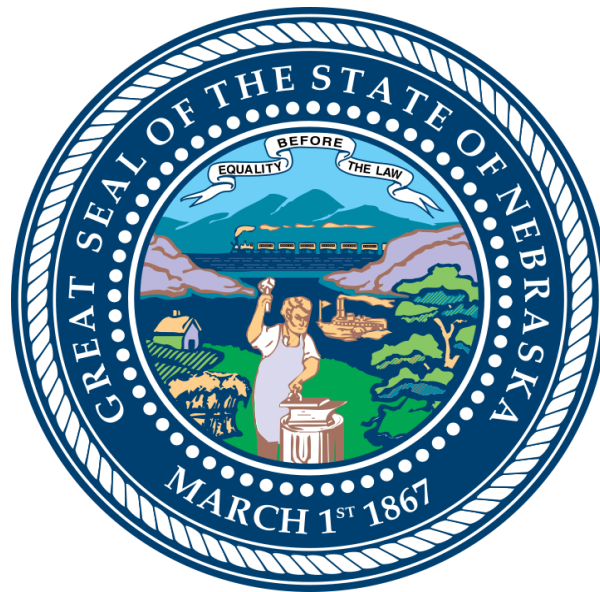
Materiel Division

Contract Manager

HANDBOOK

A tool for Contract Management

June 1, 2019



Director Administrative Services

Foreword The State of Nebraska relies on the private sector to carry out aspects of Agency missions. Because of the critical reliance on contractor support and the large expenditures involved, contract surveillance is vital to ensure contractors are providing quality services and goods in a timely manner; to mitigate contractor performance problems; and to ensure the State of Nebraska receives the best value for the taxpayer.

Contract quality performance is the responsibility of the contractor, State Purchasing Bureau, and State Agencies, alike. The contractor is responsible for carrying out its obligations under the contract in terms of quality, timeliness and cost. The State Government is responsible for ensuring that services and goods acquired conform to the quality and performance requirements of the contract.

Contract quality surveillance is an essential activity. In most cases, contract quality surveillance is the responsibility of the requiring organization — the organization most familiar with the technical complexities and nuances of the requirement — with assistance from the State Purchasing Bureau. The requiring organization prescribes contract quality requirements that the State Purchasing Bureau includes in contracts. Members of the requiring organization may be designated specific authority by the Buyer to conduct contract surveillance as a Contact Manager in order to verify that the contractor is fulfilling contract requirements and to document performance for the contract. The Contract Manager functions as the eyes and ears of the Buyer and is a liaison between the State Government and the contractor when executing surveillance responsibilities.

Contract Manager Assignments are additional duties, therefore it is vital that the management within the requiring activity participate in the process. Management within the requiring activity nominate the Contract Manager and assess performance. And a vital key to success: the management affirms that the Contract Manager will be afforded necessary resources (time, equipment, opportunity) to perform designated Contract Manager responsibilities.

This Contract Manager handbook addresses key aspects of contract quality surveillance and the roles and responsibilities of the Buyer, the Contract Manager and the requiring activity/ Contract Manager management. It is a comprehensive resource for the entire team. A primary principle throughout this handbook is the importance of diligence and open communication between the Buyer, the Contract Manager, Contract Manager's management, the requiring activity, and the contractor. This handbook is intended to supplement training. When in doubt, Contract Managers should refer to the contract, the designation memo, and the Buyer.

We envision this Contract Manager Handbook to be a living document accessible at (<http://www>). Please provide your comments and recommendations to improve the Handbook, as well as lessons learned on contract quality surveillance, to the State Materiel Contract Manager (leslie.durr@nebraska.gov).

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Introduction

The *State of Nebraska Contract Manager Handbook* provides basic knowledge and tools for Contract Managers to perform effective contract surveillance. This is intended to be one tool that may be used during contract administration and contract management.

The handbook is comprehensive in nature to provide as much information as possible for the Contract Manager. It is organized to aid the Contract Manager in finding exactly what is needed for the situation at hand. This handbook provides relevant and comprehensive guidance on performance of Contract Manager functions and the appendices offer supplemental data for instances where additional or more specific information is needed.

This handbook is a guide that may be used to provide optimal contract management. Contract Managers are empowered through the designation letter, to perform surveillance and report positive and negative situations. A Contract Manager should refer to their letter of designation for their specific duties and responsibilities assigned by the Buyer. The State standard for Contract Manager training is that the training, qualifications requirements, and surveillance duties assigned to Contract Managers must be commensurate with the complexity of the contract requirement and associated risk to the Governor.

A Contract Manager must be a State employee.

The Contract Manager program may be tailored to the Agency need and the specificity of the contract.

** The term Contract Manager and Buyer Representative are the same thing for purposes of this draft. Language will be further reviewed for the final version.

Chapter 1:

Contract Surveillance

The Importance

The critical and complex nature of contractor support, and the large expenditures involved, necessitates that the State of Nebraska conduct contract surveillance. It is imperative that contractors provide quality services and goods, in a timely manner, and within cost. The surveillance process: 1) provides a higher degree of certainty that the requiring agency is supported and successful 2) mitigates risk with Contractor performance problems and 3) ensures the State receives the best value for the taxpayer.

Success

The requiring agency identifies requirements that the contracting office transcribes into contracts. As experts on the contract requirement, members of the requiring agency may be delegated specific authority from the Buyer to conduct contract surveillance. The requiring agency, the Contract Manager and the Buyer are responsible to develop the contract surveillance and performance assessment plans. The Contract Manager functions as the eyes and ears of the Buyer/Agency and liaison between State Purchasing Bureau, State Agencies, and the contractor when executing surveillance responsibilities.

A Contract Manager may be defined as “an individual designated in writing by the Buyer to perform specific technical and administrative functions.” A Contract Manager monitors contract performance (surveillance) and provides the Buyer with documentation that identifies the contractor’s compliance or noncompliance with the terms and conditions of the contract. This documentation becomes part of the official contract file. It is important that the Contract Manager documents everything, to include: conversations and meetings with the contractor, and the purpose there of; contractor performance; recommended actions to be taken; or, any other issues.

Buy-in, support, and involvement from the management of the requiring agency is critical to the success of contract surveillance. Management within the requiring agency nominates the Contract Manager. They affirm that the Contract Manager will be afforded necessary resources (time, equipment, opportunity) to perform designated responsibilities. It is recommended that a person’s Contract Manager duties be reflected in their performance assessment or SMART Goals.

Chapter 1. Key Points

1. The importance of contract surveillance:
 - a) Provides a higher degree of certainty that the requiring agency is supported and successful
 - b) Mitigates risk with Contractor performance problems
 - c) Ensures the State receives the best value for the taxpayer
2. The requiring agency knows best the contract requirements.
3. Documented contract surveillance is key to ensuring contractors perform in accordance with the terms and conditions of the contract.
4. Contract Manager Management support is critical to the success of contract surveillance.

Chapter 2:

Roles and Responsibilities for Contract Surveillance

The three major phases in the Contract Manager process are 1) nomination and designation of the Contract Manager based on competencies, experience and training 2) performance of Contract Manager functions 3) termination of Contract Manager Appointment. The Buyer, the Contract Manager, and Contract Manager Management have specific roles and responsibilities in each of these phases.

Phase I: Nomination and Designation of the Contract Manager

A. The **Buyer** shall:

1. Upon receipt of a procurement request:
 - (a) Review the requirement of the anticipated contract and determine if it requires assistance in technical monitoring or administration.
 - (b) Identify the duties/responsibilities to be performed by a Contract Manager.
 - (c) Advise the requiring agency there is recommendation for Contract Manager support.

Note: Considerations for multiple Contract Managers include: multiple locations of performance, need for constant surveillance, size of requirement, and subject technical matter skill sets.

B. The **Requiring Agency/Contract Manager's Management**, shall:

1. Upon receipt of a request from the Buyer for Contract Manager support:
 - (a) Identify a prospective Contract Manager.
 - (b) Discuss with the Contract Manager nominee the Contract Manager duties/responsibilities to be designated and the importance of performance of Contract Manager duties/responsibilities.
 - (c) Ensure the Contract Manager nominee has no personal conflicts of interest; have the Contract Manager complete the Contract Manager Conflicts of Interests Form upon appointment and prior to the start of any training.
 - (d) Forward Contract Manager Nomination to the Buyer.
 - (e) Ensure Contract Manager Nominee receives training.
 - (f) Forward Contract Manager Acknowledgement and COI to buyer (retain a copy).
 - (g) Incorporate Contract Manager SMART Goals into performance evaluation (recommended).

C. The **CONTRACT MANAGER Nominee** shall:

- (a) Initiate request for required Contract Manager training.

- (b) Provide training documentation to the Buyer.
- (c) Contract Manager Nominees must notify the Buyer and appropriate Contract Manager Management if a potential or actual conflict of interest subsequently arises.
- (d) Participate, as appropriate, in defining contract requirements and procurement planning (pre-award processes).
- (e) Develop a contract surveillance plan in accordance with the terms and conditions of the contract (may be a draft in Phase I).

D. The Buyer shall:

1. Upon receipt of Contract Manager nomination from requiring agency:
 - (a) Review to determine if the Contract Manager nominee is trained and qualified.
 - (b) Notify the requiring activity that the Contract Manager nominee is acceptable or identify deficiencies and request additional nominations as applicable.
 - (c) Provide an orientation to the Contract Manager Nominee to address duties/responsibilities to be delegated; unique terms and conditions of the contract; importance of performance; personal conflicts of interest (COI); informal and unauthorized commitments; and ethics/integrity.
 - (d) Designate specific duties and responsibilities to the Contract Manager prior to award and ensure that the designation letter, and acknowledgement, are included in the contract file. The Contract Manager Designation letter must be signed by the Buyer, acknowledged by the Contract Manager, and copies furnished to the contractor.

Phase II: Performance of CONTRACT MANAGER Functions

A. The CONTRACT MANAGER shall:

1. Establish and maintain individual Contract Manager's files for each contract; Contract Manager Files shall be available for review by the Buyer.
2. Review and understand terms and conditions of the contract.
3. Perform Contract Manager duties/responsibilities as designated by the Buyer
4. **Not** appoint, designate, re-designate or sub-designate Contract Manager duties/responsibilities to other persons.
5. Provide complete reports on contract performance to the Buyer.
6. When advised by the Buyer, or Contract Manager's management, that the Contract Manager designation will be terminated, ensure all reports/records/communications are available to management, the successor Contract Manager and the Buyer.
7. If circumstances change and there is a reasonable expectation that the Contract Manager cannot perform effectively, (i.e., personal COI, change in assignment, etc.), notify Contract Manager's management and the Buyer to request that a successor Contract Manager be designated.

B. The **Contract Manager's Management** shall:

1. Provide resources (e.g., time, supplies, equipment, and opportunity) for performance of Contract Manager duties/responsibilities.
2. Evaluate the performance of Contract Manager's duties as part of the Contract Manager's performance assessment throughout the period of the contract. Contract Manager's management is encouraged to solicit input on performance from the Buyer (recommended).
3. If notified by the Buyer that Contract Manager's performance is inadequate, address issues with Contract Manager, emphasize the need and importance of the Contract Manager function. Notify Buyer of actions completed.
4. If notified by the Buyer that Contract Manager's performance remains inadequate and that the letter of designation will be terminated, take action to nominate replacement Contract Manager.
5. Ensure that the terminated Contract Manager provides all reports, records and files as appropriate.

B. The **Buyer** shall:

1. Review Contract Manager reports for completeness.
2. Review Contract Manager Reports and check for Contractor compliance with Contract Terms and Conditions.
3. Provide feedback on Contract Manager Performance to the Contract Manager's supervisor.

Phase III: Termination of Contract Manager Appointment

A. The **Buyer** shall:

1. When performance of the Contract Manager's functions is unsatisfactory, address concerns with the Contract Manager and their supervisor. Request Contract Manager's supervisor to address performance with the Contract Manager or to nominate a successor Contract Manager. Only the Buyer has the authority to terminate the Contract Manager designation.
2. When the requiring activity requests termination of Contract Manager's designation due to transfer, retirement or other causes, the Buyer must terminate Contract Manager Designation. The Requiring Agency may not terminate a Contract Manager designation.
3. Execute the Notice of Termination in writing, ensure it is acknowledged by the Contract Manager and Contract Manager AGER management and posted in the contract file.

B. The **CONTRACT MANAGER Management** shall:

1. Request termination of a Contract Manager designation to the Buyer and nominate a qualified successor Contract Manager, if the Contract Manager is unable to perform for any reason, including unsatisfactory performance, transfer or retirement.
2. Nominate a new Contract Manager, if applicable.

B. The Contract Manager shall:

1. Whenever possible, request relief from Contract Manager Designation, through Contract Manager Management, in advance of reassignment or separation from the State to permit the requiring activity to have adequate time to select, train and nominate a successor.
2. Ensure proper turnover of Contract Manager Files to successor Contract Manager or Buyer, as required.

Chapter 2. Key Points

1. Three Contract Manager process phases:
 - a. Nomination and designation of the Contract Manager based on competencies, experience and training
 - b. Performance of Contract Manager functions
 - c. Termination of Contract Manager appointment
2. The requiring activity is critical to identifying and nominating individuals who have the right skill set and experience, in addition to requisite Contract Manager Certification requirements.
3. It is mandatory for the Contract Manager to maintain individual Contract Manager Files for each contract or order.
4. If a Contract Manager knows in advance that he/she will be accepting a new position outside the purview of the contract or separated from State employment the Contract Manager duties it's critical that he/she notify the Buyer in advance in order to ensure continued Contract Manager Support.

Chapter 3:

Ethics and Integrity

Review of Standards

State Government personnel engaged in contracting and related activities must be above reproach in their business dealings with industry. At the same time, they must protect the State's interests and maintain its reputation for dealing fairly with contractors. All Contract Manager Designation letters require a Contract Manager to certify that they have read and understand the State Materiel Buyer's Representative Handbook. To maintain public confidence in the State Government's conduct of business with the private sector, Contract Managers must avoid even the appearance of a conflict of interest (COI). Contract Managers who may have direct or indirect financial interest in an organization that they are monitoring must advise their supervisor of the conflict so that appropriate action may be taken. An organizational or personal COI is one in which the Contract Manager is unable (or potentially unable) to render impartial assistance or advice to the State due to personal activities or relationships.

Contractors in the Workplace

Personal services contracts are contracts under which contractors may appear to be working as State employees, but in fact it must be emphasized that they are contractors in the workplace and are not State employees. In monitoring contractor performance, the Contract Manager is performing surveillance as to the terms, conditions and requirements of the contract. The Contract Manager must not treat them like they would an employee. The Contract Manager must **not**:

- Recruit, hire or fire a contractor
- Supervise a contractor
- Evaluate, award or endorse a contractor
- Assign out of scope work
- Invite them to events (not specified in the contract)
- Reassign or discipline a contractor
- Grant or deny leave to a contractor
- Change the contractor's duty hours
- Give a contractor confidential or inside information that can be used to bid State contracts

Transportation and Travel

As a general rule, official travel of a State employee is funded by the State; while, official travel of a contractor is the responsibility of the contractor as specified by

the terms and conditions within the contract.

Vehicles

Sharing a vehicle with a contractor may create liability if there an accident or injury. State provided transportation is acceptable if it is included in the contract between the State of Nebraska and a contractor.

Awards and Certificates for Contractors

There is no statutory authority to give monetary, nor non-monetary, incentives to contractors; therefore, state appropriated funds cannot be used to purchase awards or gifts that will be given to contractors. Further, the State cannot use certificates to recognize a contractor because this may complicate the source selection process on future contracts, or lead to bid protests. In no event shall a letter of commendation or any other recognition be given to a contractor without first coordinating such commendation or recognition with Legal. Specified, or implied, endorsements may cause the appearance of favoritism.

Personal Conflicts of Interest - Contractors

The State's increased reliance on contracted technical, business, and medical expertise has increased the potential for personal COIs. Unlike State employees, contractors are not required to disclose financial or other personal interests to the State Government that may conflict with the responsibilities they are performing on behalf of the State. The risk associated with personal COIs is directly related to the service acquired.

Organizational and Consultant Conflicts of Interest

Organizational Conflicts of Interest (OCIs) are a circumstance in which a contractor may have unequal access to State Government information. Or, the existence of conflicting roles might bias a contractor's judgment, either of which could lead to an unfair competitive advantage. For example, an OCI may occur when a contractor is providing engineering and technical direction, analysis, assistance, and evaluation services; preparing specifications; assisting with work statements; or acting in a capacity that gives them access to proprietary data. It is the State Government's duty to ensure that this is not permitted to occur. The potential for OCI is a growing concern as the State of Nebraska outsources more technical work to private companies.

State Government decisions in the procurement process must be objective in fact and appearance. Favoritism or other improper motives have no place in the award or administration of public contracts. Thus, the State Government has, by statute and regulation, prohibited activity that would improperly influence decision making or would

appear to do so. Following, are key areas of concern including conflicts of interest, Contract Bribery, gratuities, and gifts.

Conflicts of Interest – Nebraska Statutes and Administrative Code

(Neb. Statute 81-161.05) State Materiel Division and Division Employees cannot have a financial or beneficial interest in a contract or lease of personal property or accept anything of value from a bidder now or in the future. (Penalty: Class IV Felony and forfeiture of your position)

(Neb. Statute 81-1108.56) State Building Division and Division Employees cannot have a financial or beneficial interest in a contract or lease of personal property or accept anything of value from a bidder now or in the future. (Penalty: Class IV Felony and forfeiture of your position)

(Title 273 Nebraska Administrative Code Chapter 17) **001 Conflict of Interest.** An employee with a potential conflict of interest shall notify in writing his or her immediate supervisor and the Nebraska Accountability and Disclosure Commission. The written notification shall describe the potential conflict of interest.

001.01 An employee has a potential conflict of interest if he or she is faced with taking an official action or making an official decision which could result in a financial benefit or detriment to the employee, a member of his or her immediate family, or a business or other organization with which he or she is associated.

001.02 An employee who has an actual conflict of interest as determined by the Nebraska Accountability and Disclosure Commission shall take such steps, as the Commission shall prescribe, to remove himself or herself from the situation in which there is a conflict.

001.03 Employees failing to resolve a conflict of interest, as prescribed in the procedures outlined by the Accountability and Disclosure Commission, shall be subject to disciplinary action.

Contract Bribery

(Neb. Statute 49-14,101 Prohibited Acts) No person shall offer or give to the following persons anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby:

- A public official, public employee, or candidate
- A member of the immediate family of an individual listed above
- A business with which an individual listed under above is associated

No person listed above shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment based on an agreement that the vote, official action, or judgment of the public official, public employee, or candidate would be influenced thereby. Violation is a Class III misdemeanor

Gratuities

Gratuities may not be accepted. To be categorized as a gratuity, the item being offered must be a thing of value and be presented with the intent of corruption. As a participant in the acquisition process, the Contract Manager must constantly keep himself or herself on guard to improper actions or those that can be construed as such.

Gifts

(Neb. Statute 49-1423) Gift shall mean a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor. Gift shall not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, a gift received from a relative, a breakfast, luncheon, dinner, or other refreshments consisting of food and beverage provided for immediate consumption, or the occasional provision of transportation within the State of Nebraska.

(Neb. Statute 49-14,101.01) You may not accept a gift of travel or lodging or reimbursement of travel or lodging if it is given so a member of the employee's immediate family can accompany the employee on official business.

- The family may not accept the gift either
- Violation is a Class III misdemeanor

(Neb. Statute 49-14,101.01 Cont.) You cannot use your position or confidential information you receive through your position for personal financial gain.

- Personal Financial gain includes your immediate family or a business you are associated with.
- Violation is a Class III misdemeanor

011 Prohibited Acts and Gifts.

011.01 No employee shall use his or her State position or confidential information received through holding the State position for personal financial gain, that of an immediate family member, or that of a business or organization with which he or she is associated.

011.02 No employee shall accept anything of value, including money, a loan or a promise of future employment, from any person based upon an understanding or agreement that the official action or judgment of the employee would be influenced thereby.

011.03 No employee shall accept from a lobbyist, a principal or anyone acting on behalf of either, any gifts with an aggregate value of more than fifty dollars in a calendar month. Lists of lobbyists and principals are maintained by the Nebraska Accountability and Disclosure Commission and the Office of the Clerk of the Legislature.

Contractors may offer Contract Managers gifts or souvenirs to take home in a possible attempt to gain favor. Do not accept any gratuity, gift, favor, entertainment, loan, or anything of value from a prospective or current contractor. In State Government the Contract Manager must strictly avoid any conflict of interest, or even the appearance of a conflict of interest.

When in doubt, the Contract Manager will call their supervisor, legal and/or Accounting and Disclosure Commission about accepting a gift. The Contract Manager will keep their supervisor and the Buyer in the loop at all times.

Statement of Financial Interests

(Neb. Statute 49-1493) The individuals listed in subdivisions (1) through (13) of this section shall file with the commission a statement of financial interests as provided in sections 49-1496 and 49-1497 for the preceding calendar year on or before March 1 of each year in which such individual holds such a position. An individual who leaves office shall, within thirty days after leaving office, file a statement covering the period since the previous statement was filed. Disclosure of the interest named in sections 49-1496 to 49-1498 shall be made by:

(13) An official or employee of the state designated by rules and regulations of the commission who is responsible for taking or recommending official action of a non-ministerial nature with regard to: (a) Contracting or procurement

This statute is interpreted to read that a Buyer is required to complete the statement of financial interest; a Buyer Representative is not required to submit a statement of financial interests.

Protecting the Integrity of the Procurement Process

The State Purchasing Bureau (SOPs 8 & 47) prohibits, within SPB, disclosure of contractor bid or proposal information when they are identified as proprietary or copyrighted information. The Contract Manager must understand what information is proprietary that may not be shared or disclosed at any time during the contracting process, nor after award.

Private firms must be able to compete for the State's business on a scrupulously fair basis. Fairness is a prerequisite of State Government acquisition due to their unique position as representatives of the citizens of Nebraska. State personnel who are associated with the procurement process have a responsibility to protect its integrity by maintaining fairness in the State's treatment of all firms.

There are numerous points, within the procurement process, where the potential to lose this fairness is elevated. For example:

- Pre-solicitation: Allowing a vendor or vendors access to information on a particular acquisition (especially the specification or work statement), before such information is available to the business community at large, may give the vendor receiving the information an unfair advantage over others.
- Specifications: Intentionally writing an unnecessarily restrictive specification or work statement that would effectively exclude the products or services of a vendor and/or increase the prospects for award to another vendor is an obviously unfair practice, and limits competition.

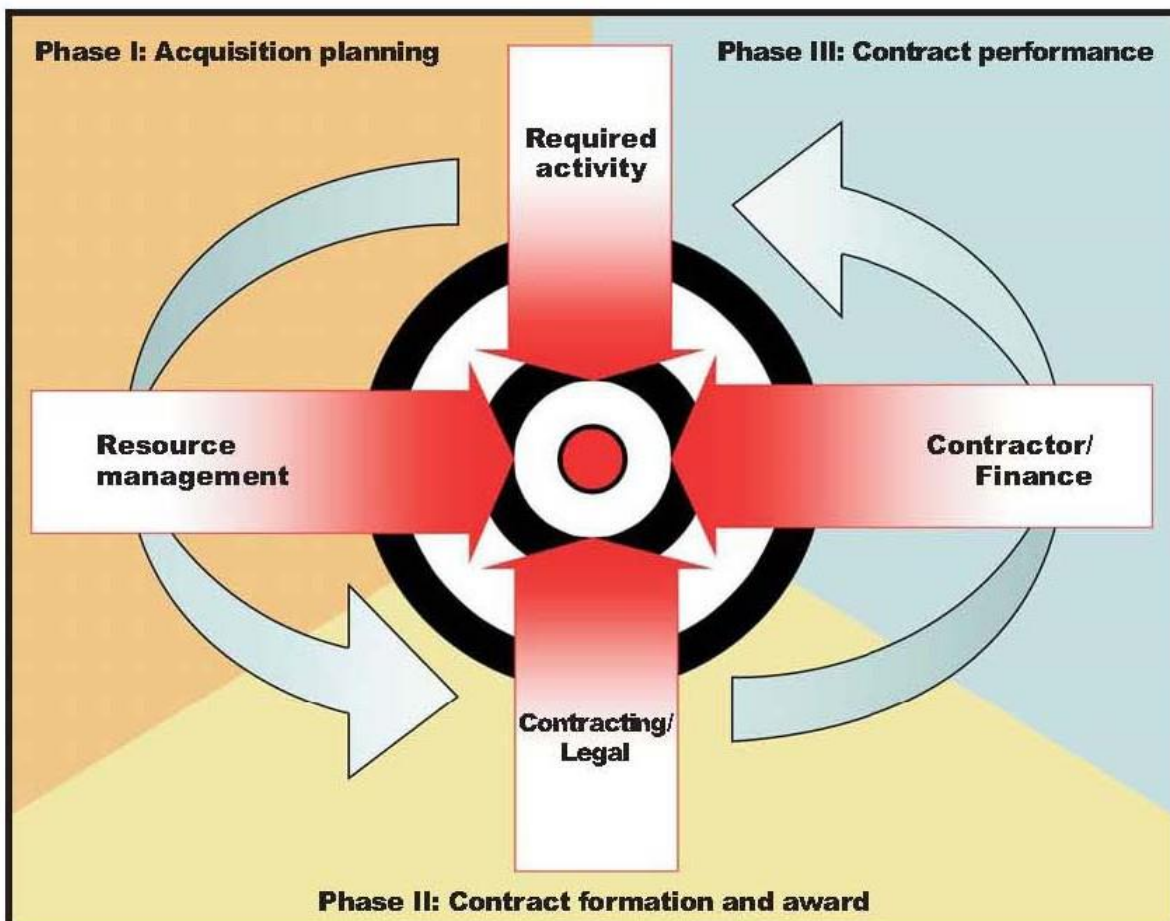
Chapter 3. Key Points

1. When performing Contract Manager Functions an individual must adhere to the highest ethical standards.
2. Contact the Nebraska Accountability and Disclosure Commission when you have any questions or concerns regarding any dealings with contractors in relation to ethics or conflicts of interests.
3. Key ethics and integrity areas include:
 - a. Personal Conflicts of Interest
 - b. Contract Bribery, Gratuities, Gifts

Chapter 4: The Procurement Team and Process

The procurement team consists of all participants in the acquisition or procurement process including, but not limited to: requiring agency, contractor, finance, buyer, legal counsel, contract manager, and resource manager. No one person has all the necessary skills for successful contract management. It requires a team with each member having specialized expertise and responsibilities. This chapter identifies and defines the roles of the procurement team members and the importance of team cohesion and cooperation to ensure the successful delivery of required goods and services. Successful procurement teams typically assign specific duties, develop performance measures and milestones, and hold team members individually and collectively accountable. Everyone ensures the team has the target in sight — it is a team effort. Figure 4-1 illustrates the procurement team functions involved in the successful completion of the procurement process.

Figure 4-1. Procurement Team Functions



The Procurement Team

Buyer

The Buyer is the only individual authorized to enter into, administer, change, and terminate contracts. Buyers are responsible for ensuring that all contract actions comply with appropriate laws, statutes, regulations and other applicable procedures, and approvals. Buyers may bind the State of Nebraska only to the extent of the authority delegated to them. The Buyer is generally the only person authorized to designate Contract Managers. Agencies may work with the Buyer if they would like to be the appointer.

A staff assistant may also be assigned to assist with contract issuance and administration; however, he or she does not hold the same authority as a Buyer.

Requiring Agency

The requiring agency is the entity that has a requirement for goods or services and requests the initiation of the procurement. The requiring agency has personnel who are responsible for developing resource requirements, identifying sources of funding, determining costs, acquiring funds, distributing and controlling funds, and tracking costs and obligations. Contract Managers routinely interface between the requiring agency (which is most likely the Contract Manager's organization), the contractor, and the Buyer.

Legal Counsel

The legal counsel provides legal advice to the procurement team and reviews procurement documents for legal sufficiency.

Contract Manager

The Contract Manager is nominated by the requiring agency and is generally designated, in writing, by the Buyer. The Contract Manager Designation letter shall be acknowledged by both the Contract Manager and Contract Manager's management or supervisor. The Buyer shall provide the contractor notification of Contract Manager Assignment. The Contract Manager, who will have technical expertise related to the requirement, shall monitor the technical or performance aspects of the contract per the terms and conditions and perform other duties specified by the designation letter. Ideally, the Contract Manager participates in pre-award activities so he or she is familiar with all aspects of the contract. The Contract Manager acts as the eyes and ears of the Buyer.

Contractor

Once the contract is awarded, the contractor becomes a member of the Procurement Team. The contractor is responsible, under the contract, for the following:

- Control the quality of goods or services
- Tender to the State, for acceptance, only those goods or services that conform to contract requirements
- Maintain evidence that the goods or services conform to required quality requirements; are within the expected cost; and are delivered on time
- Furnish such information to the Contract Manager, Buyer or appropriate State representative

Government Furnished Property

Government Furnished Property (GFP) may be identified and appropriately listed in the contract. The Buyer may designate management of GFP to the Contract Manager.

Framework for Team Success

A successful contract often depends on a successful procurement team. The key framework for a successful procurement team is as follows:

- Partnership
- Informed decisions
- Sound planning
- Efficient execution

Note: The CONTRACT MANAGER is responsible for Contract bringing any issues or performance problems to the attention of the Buyer.

The Procurement Process

The procurement process begins with procurement planning (requirements definition and funding); proceeds to solicitation, source selection, and award; and then proceeds to contract administration, which results in performance/deliveries. Upon Contract Manager's acceptance of the goods or service (if the duty has been authorized by the Buyer in the Contract Manager's designation letter), the procurement process concludes with invoicing, payment, and closeout.

The Contract Manager's primary roles occur during the contract administration segment of the procurement process. It is here that the Contract Manager monitors the contractor's performance, ensures quality, documents performance, supports the Buyer with any options

or modifications, and assists the Buyer with contract closeout.

Chapter 4. Key Points

1. The procurement team consists of all participants in the procurement process:
 - a. Buyer
 - b. Requiring agency
 - c. Buyer Representative
 - d. Legal counsel
 - e. Contractor
 - f. Finance
 - g. Others, as applicable
2. The Procurement Process includes the full spectrum of a procurement to include pre-award (e.g., developing the requirement), and post-award (e.g., purchase order, delivery, receipt, acceptance, final payment, close-out) activities.

Chapter 5:

Contract Manager Responsibilities

The Buyer specifies the Contract Manager's responsibilities in the letter of Contract Manager Designation. All duties delegated to the Contract Manager by the Buyer must be in the designation letter. If the duty is not in the letter, then the Contract Manager is NOT authorized to perform that duty. The Contract Manager's actions or inactions can subject the State of Nebraska to disputes or claims. Therefore, the Contract Manager must carefully observe the scope and limitations of the delegated authorities and should contact the Buyer about any doubts as to the correct course of action to be taken.

Pre-Award Duties

One of the key pre-award duties in which the Contract Manager may be involved is documenting requirements. The requirements package is critical to the success of a procurement, because establishes the basis for a contractual action. The package documents both the requirement and its approvals. In other words, it is through the requirements package that the contracting office is told what the user wants, when the user wants it, and whom to contact for more information.

A key element of the requirements package is the purchase request document. This document:

- is an official request for action
- triggers the contracting process to begin
- is coordinated and signed by a responsible official of the initiating office
- forms the core information of the solicitation document and resulting contract
- provides funding and financial officer certification as to the availability of funds

The requirements package also may include:

- Statement of Objectives (SOO), Statement of Work (SOW), or Performance Work Statement (PWS);
- Contract Data Requirements List
- List of Government-furnished property (GFP)
- Sole-source justification
- Patents list
- Deliverable list
- Award fee plan/incentive fee plan
- Synopsis text
- Source selection plan/evaluation factors

- Source list
- Legal review memorandum
- Market research results

The time it takes to assemble the contents of the requirements package varies based on the dollar value of the requirement and the requiring agency. The following considerations apply when assembling the package:

- Do not combine accountable items with non-accountable items
- Do not split requirements in order to fall under dollar bidding thresholds

The Contract Manager also may be involved in pre-award activities such as the following:

- Conducting market research.
- Assisting with preparing the procurement package, including the SOO/SOW/PWS. The package should use clear, accurate, performance-oriented language and express only the State's actual minimum needs in the work statement
- Preparing and submitting purchase requests. Drafting a Surveillance Plan and checklist
- Verifying the availability of funding and submitting the packet to request funds
- Evaluating proposals from vendors/contractors

Post-Award Duties

The Contract Manager's responsibilities begin with understanding the contract and establishing the Contract Manager file. Monitoring the contract includes such activities as evaluating and maintaining data, documenting performance, and review/verification of invoices. The Contract Manager responsibilities end at contract close-out or when the Buyer terminates the Contract Manager designation.

Typical Contract Manager post-award responsibilities include:

- Understand the contract
- Keep files current and complete
- File all correspondence and responses
- Monitor contract performance
- Inspect and accept or reject deliverables
- Proper treatment of proprietary and confidential information
- Manage problems
- Identify and report unsatisfactory performance to the Buyer
- Track modifications
- Conclude designation appropriately
- Provide technical expertise

- Understand Contract Manager limitations
- Protect sensitive information
- Related duties as assigned

Understanding the Contract

The Contract Manager must:

- Understand the requirements of the contract — know the State’s responsibility as well as the contractor’s. Questions about content or interpretation must be directed to the Buyer
- Attend, the post-award conference to ensure that all parties have a clear understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties
- Develop quality assurance surveillance records, including surveillance checklists and schedules, and related files
- Have ready access to all technical publications and regulations referenced in the contract

Keeping Files Current and Complete

The Contract Manager shall maintain good records not only for the next Contract Manager, but also to document contractor performance under the contract. To maintain good files, the Contract Manager must:

- Maintain a separate and current file for each contract or order
- If designated, confirm or initiate all significant technical instructions to the contractor in writing, and provide a copy to the Buyer
- Coordinate with the Buyer and the legal office on the content of any contractually significant correspondence addressed to the contractor in order to prevent possible misunderstanding or the creation of a condition that may be the basis of a later claim against the State
- Furnish the Buyer copies of Contract Manager /Contractor conference reports, trip reports, telephone conversation records, memoranda for the record, and correspondence
- Sign all reports, trip reports, memoranda for the record, appropriate correspondence, and other related documents using your name and title, followed by “Contract Manager.”

Correspondence and Responses

The Contract Manager must sign all correspondence, reports, findings,

recommendations, and other documents using name and title, followed by “Buyer’s Representative.” The Contract Manager should communicate with the Contractor, Buyer and others directly concerned with contract performance. All correspondence must reference the contract number.

Correspondence with the Contractor

The Contract Manager must forward to the Buyer a copy of any correspondence to the contractor along with an explanation, if not apparent from the text. The Contract Manager must forward to the Buyer the original of the correspondence received from the contractor, while maintaining a copy for Contract Manager File. In addition, the Contract Manager should coordinate with the Buyer on the content of any contractually significant correspondence to the contractor in order to prevent possible misunderstandings or the creation of a condition that may be the basis of a later claim. The Buyer will advise the Contract Manager of the appropriate mail system to be used.

Notifications to the Buyer

The Contract Manager must promptly inform the Buyer of the following:

- The exact date the contractor began performance.
- Incidents of unsatisfactory performance by the contractor. The Contract Manager should specify the applicable paragraph of the contract that has been violated by the contractor and the circumstances surrounding the violation, including names, dates and places, and estimated damages that have been incurred by the State.
- Delays in the contractor’s progress due to the fault of the State. The Contract Manager should include recommendations regarding any extension of the contract completion date.
- Any discrepancy between actual conditions and those represented in the contract provisions, specifications, or drawings.

The Contract Manager must advise the Buyer of the contractor’s failure to complete performance or delivery in accordance with the contract schedule. Reporting of contractor failures should not be held for the monthly report. Only the Buyer may issue Suspension of or Stop Work orders.

Monitoring Contract Performance

The Contract Manager must:

- Ensure that technical guidance given to the contractor addresses or clarifies only the State’s “intent”
- Document deficiencies in performance

- Inspect per the surveillance plan, and carefully monitor performance. Keep the Buyer informed of contractor performance of the technical requirements of the contract
- Ensure that contract performance is timely and within the scope of the work.
- Inform the Buyer if the contractor is behind schedule, document the reasons, and coordinate with the Buyer on actions necessary to restore the contract schedule.
- Ensure that, in no event, the contractor furnishes materials or services in addition to, less than, or different from those required by the contract
- Ensure that inefficient or wasteful methods are not being used through surveillance of technical performance
- Provide the Buyer reports on contractor performance as specified in the letter of designation or more frequently if appropriate
- As required by the contract and appointment, use both quantitative and qualitative methods to evaluate monthly cost and performance data, including trends and projections
- Track contract costs, depending on type of contract
- Report suspected procurement fraud, Contract Bribery, conflicts of interest or other improper conduct on the part of the contractor, contractor employees, or State personnel to your supervisor and the Buyer

Factors to consider while monitoring contractor performance:

- *Training:* Any training for contractor personnel must be within the scope of the contract. Contractor training not required by the contract shall not be paid for by the State of Nebraska.
- *Travel:* Travel for contractor personnel must be within the scope of the contract.
- *State Property:* Ensure the contractor properly accounts for and maintains State property if authorized under the contract
- *Personnel and Labor:* Contract Managers must not direct contractor personnel in performance of a contract. If designated, the Contract Manager shall review contractor invoices to ensure that labor hours and materials charged to the contract are accurate. The hours worked should equal the hours charged and invoiced to the contract. This may be done by reviewing time cards or in/out signing cards, and, for materials, by obtaining copies of invoices. Typical Contract Manager tasks include:
 - Verify work completed and materials purchased are required under the contract
 - Ensure the contractor is paid for acceptable performance and not paid for unacceptable performance (goods or services)

- Report performance deficiencies to the contractor's manager and Buyer
- Report labor disputes or problems that could impair contractor performance to the Buyer
- Report actual overtime if required under the contract.
- Ensure satisfactory subcontractor performance by observing contractor's surveillance
- Report inadequate or no contractor surveillance to the Buyer
- Validate that contractor personnel have the licenses, certifications, security clearances (if applicable) required by contract (e.g., electrical, plumbing, food service, security licenses)

Inspect and Accept/Reject Deliverables

If designated, the Contract Manager must:

- Promptly inspect the goods and/or services delivered to determine acceptability. In other words, ensure that the State receives the goods or services for which it is paying. Reject those that do not meet the contract requirements, terms and conditions
- Exercise caution in executing receipt and acceptance documentation
- Furnish the Buyer a notice of satisfactory or unsatisfactory delivery
- Complete the required performance reports thoroughly and accurately so that the Buyer can properly evaluate the contractor
- Manage the review process for contractor documents and deliverables. Verify the timeliness and accuracy of contractor reports and data to be delivered to the State. Ensure prompt review of draft reports and provide approval/disapproval/comments to the contractor through the Buyer
- Validate that the contractor's reimbursable purchases are actually received before being billed to the Government
- After verifying receipt of a deliverable, promptly notify the Buyer. Keep the originals in the contract work file and distribute copies to the Buyer, the payment office, and any other entities as required

Proprietary Information

The Contract Manager must:

- Protect contractor proprietary information
- Notify the Buyer of any requests by the contractor to publicly release information about work being performed under the contract

Managing Problems

The Contract Manager must:

- Attempt to resolve technical and administrative issues that arise. Refer disputes between the CONTRACT MANAGER and contractor to the Buyer
- Be firm but fair in all actions
- Anticipate and resolve difficulties, and ensure satisfactory completion of the contract, foster full and complete coordination, cooperation, and communication among the contractor, Buyer, and all State personnel assigned to monitor contract performance
- Validate the accuracy of all contractor responses

Handling Unsatisfactory Performance

The Contract Manager must:

- Inform the Buyer immediately if contract performance is unsatisfactory. Differences of opinion between the Contract Manager and the contractor that cannot be resolved by the Contract Manager should be referred to the Buyer
- Work with the Buyer to identify corrective actions, if necessary
- Make sure the contractor understands that the Buyer's decisions are final. Take care not to take any action that may be construed as an actual or constructive change
- Encourage correction of deficient work. However, do not personally supervise, or direct the work of, any contractor employee

Tracking Modifications

The Contract Manager must:

- Ensure that changes in the work, services, and resulting effects on delivery schedule or funding, are formalized in a written supplemental agreement or change order issued by the Buyer. The contractor must not proceed with the changes until formally approved and documented

Conclude Designation Appropriately

The Contract Manager must do the following:

- Furnish the Buyer with a formal request for termination of the Contract Manager designation signed by the Contract Manager supervisor, when it is required
- Ensure that your replacement is thoroughly briefed, both verbally and in writing, on all important issues

Note: Report suspected violations of ethics policies, incidents of fraud or bribery, conflicts of interest, and any other improper conduct to the Buyer, legal counsel, and supervisor.

Table 5-1 highlights the relationship between Contract Manager and Buyer responsibilities.

Table 5-1. General CONTRACT MANAGER/Requiring Activity and Contracting Office Responsibilities (A Guide)

Action	Requiring Agency / CONTRACT MANAGER	Buyer
Conduct market research	Responsible	Assist
Prepare SOW/PWS	Responsible	Assist
Prepare Surveillance Plan	Responsible	Assist
Prepare GFP list	Responsible	Assist
Develop sources	Assist	Responsible
Prepare solicitation	Assist	Responsible
Conduct pre-bid conference	Assist/Attend	Responsible
Evaluate proposals	Responsible	N/A
Award contract	N/A	Responsible
Conduct contract surveillance	Responsible	Assist
Request modifications	Responsible	Assist
Make modifications	Assist	Responsible
Conduct progress meetings	Assist	Responsible
Conduct inspection/acceptance	Responsible	Assist
Evaluate contractor's performance	Responsible	Assist

Technical Expertise

To monitor a contractor providing services, the Contract Manager should have technical expertise in the services being performed and outcomes required. For some services requirements, a single Contract Manager may not be adequately versed in all technical issues that may arise.

Therefore, the Contract Manager may need to consult additional personnel, or more than one Contract Manager may be designated as the technical subject matter expert. If the Contract Manager consults additional personnel, he or she should inform the Buyer. The Contract Manager may involve additional personnel in communications with the contractor, but the Contract Manager remains the official liaison for any technical communications with the contractor, including technical interpretations.

Limitations

The Contract Manager must understand the limits of his or her authority. Although the Buyer delegates certain responsibilities to the Contract Manager, authority to legally bind the State remains with the Buyer. Remember, Contract Managers do not have the authority to:

- Make any agreement with the contractor that obligates public funds
- Make commitments that affect the price, quality, quantity, delivery, or any other term or condition of the contract
- Encourage or permit the contractor to perform any work beyond or outside the scope of the contract
- Interfere with contractor's management of its employees, including "supervising" or directing the work of the employees
- Order or accept supplies or services not expressly required by the contract
- Discuss any information that may give one contractor an advantage in future procurements
- Direct the contractor to begin work prior to contract award date
- Issue oral or written instructions to the contractor to start or stop work

The Contract Manager must be mindful of the limitations to his or her authority and **avoid** the following:

- Getting into situations that may place the Contract Manager in a conflict of interest (financial or otherwise) between private and public interests
- Accepting designation as a Contract Manager if a potential conflict of interest exists. Report the matter immediately to your supervisor and the Buyer for determination.
- Accepting a Contract Manager designation if he or she does not have the time to perform a thorough and complete job of the duties in the letter of designation and this handbook. On some types of contracts, performance as Contract Manager may be a full-time effort. The Contract Manager is responsible for his or her own work/time management
- Using an official position title to coerce or in any manner influence anyone for personal gain
- Taking any action that will obligate, or give the appearance of obligating, the State financially or otherwise. Only the Buyer has this authority
- Making or implying promises related to future business
- Soliciting unsolicited proposals
- Contacting contractors and giving them information about upcoming procurements
- Contacting prospective contractors when procurement is being solicited or offers are being evaluated
- Assisting prospective contractors with their preparation of offers or quotations
- Attesting to having read and understood Chapter 3 of this Handbook (Ethics) without understanding the contents.
- Accepting any gratuities. To be safe, do not accept any gifts, loans, or favors from a

contractor or from its employees

- Report any offers immediately to the Buyer, your supervisor and legal counsel. This applies both to the Contract Manager and to his or her family members
- Splitting quantities to circumvent bidding procedures/regulations and approvals required for higher dollar-value procurements
- Telling the contractor how to run its operation. This includes telling the contractor to fire an individual. Terminations of employment are actions for the contractor.
- Letting personalities enter into discussions with the contractor
- Permitting the contractor to proceed on work outside the scope of the contract. It may be in the contractor's interests to exceed the contractual limitation with the intent of claiming additional consideration for additional effort
- Committing the equipment, supplies, or personnel of the contractor for use by others. The contractor and the Buyer control all such matters
- Permitting the contract to take on the appearance of a personal services contract, for example, when contractor personnel appear, in effect, to be State employees.
- Engaging in any employee-employer relationship where contractor personnel are subject to relatively continuous supervision and control by a State employee. The contract determines what, how and when the contractor does particular tasks, and the contractor is responsible for managing his work force
- Re-delegating Contract Manager authority to any other person, such as a technical point of contact

Additionally, while the Contract Manager limitations could simply be stated in a letter, in the real world ensuring that the Contract Manager does not exceed the authority granted is much more complex. In the course of performing Contract Manager Responsibilities, situations might result in an implied change to the contract which, in turn, may impact the delivery, schedule, funds, or other areas outside the authority of the Contract Manager. Contract Managers might exceed the scope of their authority by inaction or improper action. For example, a Contract Manager on an equipment installation contract fails to ensure the State installs electrical outlets and a raised floor in preparation for the equipment installation. When the contractor arrives to install the equipment, they are unable to do so as the site had not been properly prepared. By inaction, the Contract Manager allowed a potential claim to be made for State-caused delay.

Protecting Sensitive or State Information

State employees may not divulge information received in the course of their employment or official duties. The Contract Manager should take care not to discuss procurement or sensitive information in areas that are not secure (e.g., hallways) or in meetings that are not State only. Additionally, the Contract Manager should take care to discuss acquisition or sensitive information only with State personnel with a specific need-to-know.

Related Duties

State Purchasing Bureau encourages the Contract Manager's participation throughout the procurement process. Here are some functions that the Contract Manager may be expected to complete but as an agent of the agency, not as the representative of the Buyer.

Chapter 5. Key Points

1. Contract Managers need to understand the contract they are overseeing.
2. Contract Managers must establish current and complete files associated with overseeing contractor performance. These files will eventually become part of the Buyer's contract file.
3. Monitoring contractor performance is key to successful contract execution.
4. Contract Managers may be called upon to review contractor training requests, travel, contractor time cards, and requests for using Government-furnished property.
5. Contract Managers are often the primary person to accept or reject goods/services.
6. Contract Managers must understand the limits of their authority.
7. Contract Managers need to be careful in performing their duties in order to ensure contract claims are not filed by the contractor, or that there is not the appearance of preference for one contractor that may result in harming another contractor.
8. The Buyer will rely upon the Contract Manager for their technical expertise relating to contract performance over and above performing the traditional Contract Manager functions for such areas as developing performance work statements, developing independent government estimates, or involvement in source selections.

APPENDIX D:
ACRONYMS AND TERMS
ACRONYMS

ARO	After Receipt of Order
ACH	Automated Clearing House
BAFO	Best and Final Offer
CAP	Contract Administration Plan
CCO	Contingency Buyer
CCR	Central Contractor Registration
CDR	Contractor Discrepancy Report
CDRL	Contract Data Requirements List
CI	Commercial Item
CLIN	Contract Line Item Number
COI	Certificate of Insurance
COI	Conflict of Interest
CPU	Central Processing Unit
CPI	Consumer Price Index
DAS	Department of Administrative Services
DBA	Davis-Bacon Act (Construction)
EPA	Economic Price Adjustment
ETF	Electronic Funds Transfer
FFP	Firm Fixed Price
FICA	Federal Insurance Contributions Act
F.O.B	Free on Board
GSA	General Services Administration
IT	Information Technology
ITB	Invitation to Bid
MFR	Memorandum for the Record
NIGP	National Institute for Governmental Purchasing
OCI	Organizational Conflicts of Interest
PA	Participating Addendum
PBS	Performance-Based Services
POC	Point of Contact
POP	Period of Performance
PR	Procurement Requisition
	Public Records Request
PC	Purchase Card
PO	Purchase Order
PRS	Performance Requirement
QAR	Quality Assurance Representative
QASP	Quality Assurance Surveillance Plan

RFI	Request for Information
RFP	Request for Proposal
SOO	Statement of Objectives
SOW	Statement of Work
SPB	State Purchasing Bureau
T&M	Time & Materials
U.S.	United States

Definitions

Acceptance: Act of an authorized representative of the State whereby formal acknowledgement is made that the contractor’s performance, or goods delivered, are in agreement with the contract.

Acceptance Test Procedure: Benchmarks and other performance criteria, developed by the State or other sources of testing standards, for measuring the effectiveness of products or goods and the means used for testing such performance.

Addendum: Something to be added or deleted to an existing document; a supplement.

After Receipt of Order (ARO): After Receipt of Order

Agency: Any state agency; board; commission; or other office or agency established by the Constitution of Nebraska (exceptions: University of Nebraska, the Nebraska State colleges, the courts, the Legislature).

Agent: A person authorized to act on behalf of another. A Buyer signing a State contract does so as an agent of the State Government.

Agreement: Frequently used interchangeably with the term Contract. “Agreement” has a Contract broader meaning than Contract, since every Contract is an Agreement; but not every Agreement is a Contract. Contracts formalize Agreements and create legal Obligations. Associated Words/Concepts: understanding, deal, promise.

Alternative Dispute Resolution (ADR): Any type of procedure or combination of procedures used voluntarily to resolve issues in controversy. Examples of ADR procedures are facilitation, mediation, fact-finding, and arbitration. (Also see Vendor Performance Report Form)

Amend: To alter or change by adding, subtracting, or substituting.

Amendment: A written correction or alteration to a document.

Appropriation: Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Award: All purchases, leases, or contracts which are based on competitive bids will be awarded according to the

provisions in the ITB. The State reserves the right to reject any or all bids, wholly or in part, or to award to multiple Bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid, and do not improve the Bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

Bid: The offer submitted by a vendor in a response to a written solicitation.

Best and Final Offer (BAFO): In a competitive bid, the final offer submitted which contains the bidder's (vendor's) most favorable terms for price.

Bid/Proposal: The offer submitted by a vendor in a response to written solicitation.

Bid Bond: An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the vendor will not withdraw the bid.

Bidder: A vendor who submits an offer bid in response to a written solicitation.

Bilateral Change Order: Contract amendment (supplemental agreement) signed by the contractor and the Buyer.

Contract Breach of Contract: A failure to fulfill contractual Obligations, wholly or in part, without contractual or legal excuse. The failure of any Party to a Contract failing to perform or by performing in a non-compliant manner (outside the Contract's terms) or by interfering with another Party's performance.

Business: Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

Business Day: Any weekday, except State-recognized holidays.

Buyer: Individual who is duly appointed and designated with specific authority to enter into, administer, and terminate contracts and to make related determinations and findings on behalf of the State Government.

Buyer's Representative (CONTRACT MANAGER): Individual, including a Buyer's Technical Representative (BTR), designated and authorized in writing by the Buyer to perform specific technical or administrative functions related to monitoring a contract. The Contract Manager must be (1) a State employee (2) qualified by training and experience commensurate with responsibilities to be delegated in accordance with department or agency guidelines, and (3) designated in writing. The Contract Manager has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

Buyer's Representative (CONTRACT MANAGER) Nominee: Individual identified by the requiring activity and accepted by the Buyer as having the general competencies, agency experience, relevant technical experience, and training (or a training plan if not yet trained) to perform those Contract Manager functions delegated by the Buyer. When appropriate, the Contract Manager should be nominated as early in the procurement cycle as practicable. This allows the Contract Manager nominee to provide subject matter expertise and to ensure that he or she is familiar with the requirements, specific terms and conditions of the resultant contract, and the functions to be delegated.

Calendar Day: Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

Cancellation: To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

Change Order (unilateral): Written order, signed by the Buyer, directing the contractor to make a change that the *Changes Clause* authorizes. Does not require consent or signature from the Contractor.

Change Order (bilateral): Written order, signed by the buyer and the Contractor, to make a within scope change to the contract.

Claim: Assertion by one of the parties to a contract seeking adjustment or interpretation of an existing contract, subject to the dispute clause in the contract.

Clause: Term or condition used in a contract or both the contract and solicitation.

Commodities: Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

Commodities Description: Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results.

Competition: Acquisition strategy in which more than one contractor is sought to bid on procurement. Maximum, practicable competition is obtained by soliciting at least three sources.

Confidential Information: Unless otherwise defined below, “Confidential Information” shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

Contract: Agreement, enforceable by law, between two or more competent parties to do or not do something not prohibited by law for a legal consideration. A contract as a mutually binding legal relationship obligating the seller to furnish the goods or services (including construction) and the buyer to pay for them.

Contract Administration Plan (CAP): Plan describing the procedures and tasks to be used by the State Government to administer a contract. Those tasks include file documentation and quality assurance functions. Implementation of the plan will establish a quality audit trail of contract performance with respect to the specifications, cost, delivery requirements, and applicable laws, regulations, and contract clauses.

Contract Management: An umbrella term referring to the entire contracting process, which includes Contract Monitoring and Contract Administration activities from the original purchase through Contract close-out. The term also includes Monitoring the Contract relationship, addressing related problems, identifying necessary changes or modifications, ensuring both Parties meet or exceed their respective performance requirements, and actively interacting with the Contractor to achieve the Contract's objective(s). Associated Words/Concepts: Often used interchangeably with Contract Administration.

Copyright: A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

Cost-Reimbursement Contract: Agreement that provides for payment of allowable incurred costs, to

the extent prescribed in the contract.

Cure Notice: Document the Buyer sends to a contractor to notify the contractor that the contract may be terminated by reason of default if the condition endangering performance of the contract is not corrected. A minimum of 10 days for the contractor to make the cure is recommended (situationally dependent).

Data Item Description (DID): Document that defines the data required of a contractor. The DID specifically defines the data content, format, and intended use.

Data Rights: Rights to use recorded information, regardless of its form or the media on which it may be recorded. The term includes rights to technical data and computer software. The term does not include rights to information incidental to contract administration, such as financial, administrative, cost or price, or management information. The Government can acquire three types of data rights: (1) unlimited rights to all data, which is costly; (2) limited rights or restricted rights (a few essential rights for Government personnel only, which has a relatively low cost); and (3) government purpose rights, which includes rights for Government contractors as long as the use is for a Government purpose, at a moderate cost.

Default: Omission or failure to perform a legal or contractual duty, discharge an obligation, or perform an agreement. Similar to, but not synonymous with, Contract Breach as not all Defaults are Contract Breaches of Contract.

Delivery Order (DO): Order for supplies placed against an established contract or with State sources.

Deviation: Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract.

Purchase Order Contract: Contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of purchase orders for the delivery of supplies during the period of the contract.

Dispute: Disagreement between the contractor and Buyer regarding the rights of the parties under a contract.

Economic Price Adjustment (EPA): Provision in a fixed-price contract that allows for upward or downward revision of the stated contract price under specified contingencies.

Equitable Adjustment: Adjustment of price, including an adjustment for profit, due to a change in contracted work, such as a change in the delivery schedule or any other terms of the contract.

Evaluation: The process of examining an offer after opening to determine the vendor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

Evaluation Committee: Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids/s (offers made in response to written solicitations).

Excusable Delay: Delay arising from causes beyond the control and without the fault or negligence of the contractor. Examples are (1) acts of a public enemy, (2) acts of the Government in its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather.

Extension: Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with “Renewal Period”.

Fair and Reasonable Price: Basic tenet of Government contracting that an award be made at a fair and reasonable price to both parties to the contract. If the contract is set up with the correct contract type allowing for appropriate cost risk, a good contractor should be able to make a reasonable profit.

Firm-Fixed-Price (FFP) Contract: Agreement to pay a specified price when the supplies or services called for by the contract have been delivered and accepted within a specified time.

Free on Board (FOB) Destination: Title of the goods passes at destination. Contractor has total responsibility until shipment is delivered. Ownership (title and control) remains with contractor until goods are delivered. The contractor is responsible for all of the transportation arrangements.

Free on Board (FOB) Origin: Title passes at origin, and the State has total responsibility over the goods while in shipment. The State takes ownership (title and control) of the goods at the origin (when the carrier signs for goods) and is responsible for transportation of the goods beyond this point.

Full and Open Competition: Procurement environment in which all responsible sources are permitted to compete.

General Services Administration (GSA): Agency in the executive Contract Branch of the U.S. Government that procures common supplies and services (including construction) used by Government agencies.

Government-Furnished Property (GFP): Property in the possession of or directly acquired by the Government and subsequently made available to the contractor.

State Purchase Card (P Card): Card, similar to a commercial charge card, issued to authorize agency personnel to use to acquire and pay for goods and services.

Indefinite-Delivery Contract: Contract used to acquire supplies or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts.

Information Resources: All resources and activities employed in the acquisition, development, collection, processing, integration, transmission, dissemination, distribution, use, retention, storage, retrieval, maintenance, access, disposal, security, and management of information. Information resources include doctrine, policy, data, equipment, and software applications, as well as related personnel, services, facilities, and organizations.

Information Technology (IT): Any equipment, or interconnected system or subsystem of equipment, used for the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or receipt of data or information. IT includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.

Inspection: Process broadly defined as “the examination of an item by comparing it with predetermined standards to determine conformance to requirements.” The narrow definition of inspection is “a visual examination which does not use special laboratory equipment or procedures.” In the phrase inspection

and acceptance, the Contract broad definition applies. In the phrase test and inspection, the narrow one applies.

Invitation to Bid (ITB): Solicitation used by the State (in the sealed bidding method of contracting) to invite offerors to make a bid on a specific requirement and to describe the conditions under which offers will be received.

Justification and Approval (J&A): Document that justifies and obtains approval for contract solicitations that use other than full and open competition.

Labor-Hour Contract: Contract that provides for the procurement of services on the basis of direct labor hours at specified, fixed hourly rates (which include direct and indirect labor, overhead, and profit).

Letter Contract: Written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

Market Research: Process used for collecting and analyzing information about the market available to satisfy the minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

Negotiation: Contracting approach that uses either competitive or other than competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract. Negotiation may also be used to modify the contract after award.

Nonexcusable Delay: Delay that could have been prevented by the contractor. Such a delay would not be a reason to extend the delivery schedule without consideration.

Nonpersonal Services Contract: Contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the State and its employees.

Offer: One of the five elements of a contract. As a response to a State solicitation, an offer, if accepted by the State's Buyer, would legally bind the offeror to perform the resultant contract. An offer could be in the form of a bid or a proposal.

Offeror (Bidder/Vendor): Entity that offers, via a proposal, to provide supplies or perform services needed by the State. An offeror becomes a contractor when the State accepts the offer. In sealed bidding the offeror is called a bidder.

Open Market Purchase: Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

Organizational Conflict of Interest: Situation that exists when the nature of the work to be performed under a proposed State contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

Partial Payment: Payment for supplies or services delivered to, and accepted by, the Government, that represent only part of the contract requirements.

Past Performance: History of how well a contractor performs on a contract or contracts. The State tracks contractor performance to assess the risk of using the same contractor on a similar project sometime in the future. (The State supplements past performance data with data from other sources.)

Performance Specification: Description of the end item in terms of output, function, or operation. The contractor is responsible for determining the specific design necessary to achieve the performance levels stated. Performance specifications are preferred over design specifications.

Performance Work Statement (PWS): Description of the required results in clear, specific, and objective terms with measurable outcomes.

Performance-Based Services Acquisition (PBSA): Acquisitions that focus on the purpose of the services to be performed rather than the manner in which the work is to be performed. A PBSA is designed to ensure that contractors are given the freedom to determine how to meet the State's performance objectives so that appropriate performance quality levels are achieved, and that payment is made only for services that meet these levels.

Personal Services Contract: Contract that may create an appearance of employer-employee relationship between the State and the contractor's personnel. The State is normally required to obtain its employees by direct hire under competitive appointment, designation, or other procedures required by State statutes or civil service law. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless the State has specifically authorized acquisition of the services by contract. (See Personal Services Guide at <http://das.neContract Manageraska.gov/materiel/purchase bureau/agency-info.html>)

Pre-award Survey (PAS): Study of a prospective contractor's financial, organizational, and operational status. A PAS is conducted prior to contract award to determine the contractor's responsibility and eligibility for State procurement.

Procurement: Buying, purchasing, renting, leasing, or otherwise acquiring goods or services.

Requisition: Initial request for a contracting action, submitted by the requiring activity. The requisition (procurement request) consists of all the documentation required to establish a contract, a purchase order, or a construction contract.

Procurement Team: All participants in the procurement process: requiring activity, finance, Buyer, legal counsel, Contract Manager, resource manager, quality assurance representative, and others, as applicable. No one person has all the necessary skills for successful contract management. It requires a team with each member having specialized expertise and responsibilities.

Procuring Buyer: The individual who has the authority to award the contract (or Purchase Order). This individual may also administer the contract and may handle termination settlements.

Progress Payment: Method of contract financing in which the Government pays a contractor as work progresses even though supplies or services have not been delivered. Progress payments may be based on costs incurred, percentage of work completed, or completion of particular phases.

Prompt Payment Act: Law defining the standard amount of time allowed for payment to Government contractors.

Proposal: Document submitted by an offeror in response to a request for proposals, issued by the State,

for providing supplies or performing services.

Proprietary Information: Information that belongs to an offeror or contractor, and applies to manufacturing processes, operations, or techniques that may distinguish that entity from its competition. The entity must label its proprietary information, and the State must prevent the release of proprietary information to unauthorized parties.

Protest: An interested party's written objection to an agency's solicitation of offers for a proposed contract to acquire supplies or services. A protest also may be an interested party's written objection to the proposed or actual award of a contract.

Provision: Term or condition that is used in the solicitation and applies before contract award.

Purchase Order: Order for supplies or services (used in the simplified acquisition method of contracting). Normally used above the micro-purchase level, purchase orders may be unilateral (requiring only a Government signature) or bilateral (requiring the signature of both the Buyer and the contractor).

Quality: Combined attributes (performance features and characteristics) that indicate the ability of a supply or service to satisfy a given need.

Quality Assurance: Process consisting of planned, systemic actions necessary to provide confidence that adequate technical requirements are established; supplies and services conform to established technical requirements; and, satisfactory performance is achieved.

Quality Assurance Representative (QAR): When a contract has been delegated to the Defense Contract Management Agency to administer, the CONTRACT MANAGER will work closely with the QAR. The QAR ensures the contractor is in compliance with contractual requirements, evaluates and documents contractor performance, follows up with the contractor on documented deficiencies, and provides input for the Performance Evaluation Board through the Administrative Buyer.

Quality Assurance Surveillance Plan (QASP): Guide that describes the contract monitoring methods in detail. The QASP is usually written by the same team that develops the work statement and is used in monitoring a contract. A QASP is mandatory for contracts, task orders, or delivery orders over the simplified acquisition threshold, including service contracts and construction contracts⁴⁵.

Quality Control Plan: Method put into place by a contractor to monitor or control the performance of services to meet contract requirements. This plan is also known as a quality assurance plan (QAP).

Random Sampling: Method of inspection used when it is not feasible to examine all items presented prior to acceptance. Under this method, a predetermined quantity is inspected at random. In this way, the contractor does not know which items will be inspected. In theory, random sampling is highly reliable as an indicator of overall quality.

Ratification: Approval, by an official with the required authority, of an unauthorized commitment. A ratifying official is never compelled to ratify an unauthorized commitment.

Reasonable Cost: Cost which, in its nature and amount, does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. In determining reasonableness of a specific cost, the Buyer shall consider: Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of a contractor's business or the contract performance; Generally accepted sound business practices, arm's length bargaining, and federal and

state laws and regulations; The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and public at large; and Any significant deviation from the contractor's established practices.

Renewal Period: Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

Replacement in Kind (RIK): Type of payment on an acquisition and cross-servicing agreement in which logistics support, supplies, or services are transferred to an activity and that activity pays by providing the same kind of logistics support, supplies, or services at a later date.

Request for Proposals (RFP): The solicitation used for negotiated acquisitions to communicate Government requirements to prospective contractors and to obtain proposals.

Requirements Contract: Indefinite-delivery type of contract that commits the Government to the exclusive use of the contractor to provide supplies or services as outlined in the contract for the period stated. This type of contract does not commit the Government to a specific quantity of supplies or services. Delivery orders are used to request supplies and task orders are used to request services when needed. Delivery orders and task orders also give the location and time of delivery or performance. Under this type of contract, the Government is at risk of a Breach of contract suit if, for any reason, it gives a competitor the work promised before the contractor has a chance to refuse it.

Responsibility: Determination that the contractor has the capability to perform a contract successfully. Because the responsibility decision must be made prior to award, it is somewhat speculative. It can be based on a formal pre-award survey of technical capability, production capability, quality assurance capability, financial capability, accounting system, and other factors such as property control, transportation, packaging, security, safety, environmental or energy conservation, and flight operation or flight safety. It is also possible to make a responsibility determination without a formal pre-award survey when data are available to support a positive decision.

Sealed Bidding: Method of contracting that employs competitive bids, involves public opening of bids, and makes an award to the responsive, responsible bidder, considering only price and price-related factors.

Set-aside: Reserving of an acquisition or portion of an acquisition exclusively for participation by an identified group.

Show-Cause Letter: Document sent by the Buyer to a contractor that is failing to perform in accordance with the terms of the contract. The letter notifies the contractor that the contract may be terminated by reason of default unless the contractor can prove within 10 days that the condition was not the fault of the contractor.

Procurement Thresholds:

Small Business: Entity, including its affiliates, that is independently owned and operated, is not normally dominant in the field of operation in which it is performing on Government contracts, and meets certain other size criteria set by the SBA.

Small Business Program: Program designed to ensure that small businesses — including small disadvantaged businesses, 8(a) firms, women-owned businesses, minority colleges, and labor surplus area firms, among others identified by law — receive a fair share of DoD procurement dollars. In furtherance of economic objectives, various public laws and executive orders have designated that these groups be

provided special opportunities in solicitation and award of federal contracts.

Sole Source: Source that is characterized as the one and only source, regardless of the marketplace, possessing a unique and singularly available performance capability for the purpose of the contract award.

Sole-Source Procurement: Contract for the purchase of goods or services that is entered into, or proposed to be entered into, by an agency after soliciting and negotiating with only one source. Sole-source contracts require special approvals.

Solicitation: Request for proposal or invitation for bids issued to prospective offerors or bidders.

Source Selection: Process in which the requirements, facts, recommendations, and Government policy relevant to an award decision in a competitive procurement are examined and a decision is made.

Specification: A document used in development and procurement that describes the technical requirements for items, materials, and services. A specification also describes the procedures that the Government will use to determine if the requirements have been met. Specifications may be unique to a specific program or common to several applications.

Statement of Objectives (SOO): Statement, provided in the RFP, that specifies the basic top-level objectives of the acquisition, but does not include *how to* instructions. With a SOO, potential offerors have the flexibility to develop cost-effective solutions and the opportunity to propose innovative alternatives meeting the requirement. By reviewing an offeror's solutions, the Government can assess the extent to which the offeror understands all aspects of the effort to be performed.

Statement of Work (SOW): Statement, provided in the RFP, that specifies the basic, top-level objectives of the acquisition, as well as the detailed requirements of the Government. The SOW also provides the contractor with *how to* instructions to accomplish the required effort, and it forms the basis for successful performance by the contractor and effective administration of the contract by the Government.

Supplemental Agreement: Contract modification accomplished by the mutual action of the Buyer and contractor. This is a bilateral agreement and must be executed by both the contractor and the Buyer.

Supplies: All property except land or interest in land.

Synopsis: State's notice on the DAS – Materiel website announcing the specific requirement for supplies or services and the procedure for receiving a copy of the solicitation document. The Government is required to use this vehicle for ensuring full and open competition unless a valid exception exists.

Task Order: Instrument used to order work under a task order contract (see below). Task orders are always written by the Buyer, and when obligating funds, must be on a form prescribed by FAR or DFARS. Task orders are made a part of the contract file and the CONTRACT MANAGER's working file.

Task Order Contract: Contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

Termination: Cancellation of all or part of the work that has not been completed and accepted under a

contract. Under specific circumstances, termination may be for default of the contractor or for convenience of the Government.

Time-and-Materials (T&M) Contract: Contract that provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost, including, if appropriate, material handling costs as part of material costs. A T&M contract establishes a ceiling price that the contractor may not exceed. Substantial surveillance on the Government's part is required to ensure that efficient methods are used. A QASP is mandatory for any contract, task order, or delivery order that involves a T&M service contract or for a T&M construction contract over the micro-purchase threshold.

Unauthorized Commitment: Agreement that is not binding, because the Government representative who made the agreement lacked the authority to obligate the Government contractually. An unauthorized commitment must be ratified at very high levels. If the approval authority decides not to ratify the unauthorized commitment, the person who caused it may be held personally and financially liable. Even if the action is ratified, the person who caused it may be subjected to administrative or other penalties.

Unilateral Modification: Modification that is effective upon signature by the Buyer; the contractor's signature or assent is not required. Unilateral modifications are used to:

- Make administrative changes;
- Issue change orders;
- Make changes authorized by clauses other than a Changes clause (such as Property, Options, or Suspension of Work clauses); and
- Issue termination notices.

Warranty: Promise given by the contractor regarding the nature, usefulness, or condition of the supplies or services furnished under a contract. Warranties normally provide a contractual right for the correction of defects, notwithstanding any other contract provision. Warranties also establish a time period for exercising this right. The Government should take advantage of commercial warranty provisions normally offered by contractors rather than designing unique warranty provisions. However, the use of warranties is not mandatory; they should be used only when in the best interest of the Government.

Work Plan: Guideline for monitoring contract performance.