



Drafting the Contract

A checklist to ensure a comprehensive contract draft



Contracting

Check off each of the conditions below once they are met as you prepare a draft contract:

Have you become completely familiar with all the provisions in the contract, even those that seem to you to not be particularly interesting or relevant?

Have you defined key terms such as “maintenance,” “support” and enhancement?”

Is the term of the contract (beginning and end date) included?

Is any provision for contract renewal or “option years” included and clear in terms of the criteria which must be met for the contract to be renewed?

Have you listed a single point of contact for the jurisdiction and for the contractor?

Do the contractual duties closely mirror those in the performance work statement used in the solicitation?

If not, were changes negotiated with the successful bidder/contractor?

Are you clear whether payment schedule in the contract is best structured as deliverables-based, time and materials or other? (See the **contract styles for services** section of the toolkit.)

Is the deliverables schedule and/or payment schedule clear and unambiguous?

Is a maximum funding amount established, if needed?

Are specific due dates listed for any deliverables?

Is the payment tied to the deliverables?

Are payments scheduled frequently enough to avoid financial hardship for the contractor?

Are an approval process and schedule included?

Does the contract allow for a change process to accommodate new CDC requirements or other priorities not envisioned at the time of contract execution?

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Are budgetary and any other limits on travel clearly identified?

Are the activity and financial reporting requirements clearly specified in terms of content, any templates to be used and the due dates?

Is a date listed for the final report and invoice (which may be a specified number of days after the period of performance/term of the contract)?

Are penalties for non-performance clear? (See checkboxes below for more specific criteria.)

The circumstances under which the penalties are invoked?

The type(s) of penalties (financial or other) and, if more than one type, which apply to which circumstance(s)?

The role of program staff in providing supporting documentation related to penalties?

Are penalties measured; that is, incremental in severity based on incremental definitions of contract violations? (Tip: avoid a situation in which the only penalty is contract cancellation.)

Is a clear process provided for dispute resolution?

Is the cancellation/termination clause clear as to if, why and when the contract could be cancelled/terminated by the jurisdiction?

Does it include the obligations of the jurisdiction and/or the contractor in case of a cancellation?

Does the contract include a provision extending to the contractor and its staff the necessity to protect the confidentiality of the data in the data?

Do any intellectual property rights, indemnification or liability insurance provisions seem inappropriate given the nature of any commercial software or the size of the bidder organizations?

If you are migrating to a new IIS from another vendor-supported system, have you allowed for an overlap in contracted support?

Are you aware of what your jurisdiction's attorney general's office typically focuses on, and have you done your best to address those issues before sending for AG review?