Office of the State Auditor

The Basics of Contract Management in Vermont State Government

Special Report

Reducing the Risks and Increasing the Benefits of Service Contracts through Stronger Contract Management & Monitoring

Elizabeth M. Ready
Vermont State Auditor

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To obtain additional copies of this report contact:

Elizabeth M. Ready
State Auditor

Office of the State Auditor
132 State Street
Montpelier, VT 05633-5101
(802) 828-2281
1-877-290-1400 (toll-free in Vermont)
auditor@sao.state.vt.us

This report is also available on our website:
www.state.vt.us/sao

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Introduction

The State of Vermont is using many private contractors to deliver essential goods and services. For example, in FY 2002, 36 departments entered into 924 personal services contracts valued at more than $315 million. In FY 2003, 33 departments entered into 727 personal services contracts valued at more than $109 million. (1)

Are contracts the answer to saving the taxpayers money and offering services in a more flexible and responsive way? Or does the outsourcing of public services lead to higher costs, lower quality and increased risk to the State?

The answers to these questions depend upon whether the departments contracting for services have strong systems of contract management and quality assurance.

As State government continues to outsource public services, managers must ensure that private contractors are living up to their obligations, and that there is a system in place to verify the quality of all work paid for with public funds. This means as service contracts become more numerous, more costly and more complex, State employees must be empowered with the skills to hold vendors accountable for their actions and ensure that Vermont taxpayers are not defrauded and/or obligated to pay for contractors' mistakes.

This guide is designed to provide managers with a one-stop manual to improve contract management. It offers a simple overview in six areas: Before You Go Out to Bid; Bidding Your Contract; Selecting the Winning Bid; Before You Sign Off on the Contract; Managing Your Contract: Creating a Contract Management Plan; and, Closing Out Your Contract: The Post-Contract Review.

This guide includes a comprehensive checklist for managers and other key personnel, which outlines the key items you should address at each step of the contract process. It includes copies of applicable State bulletins, statutes, and a bibliography of helpful resources. The Auditor's Office has also created a new section on our website (http://www.state.vt.us/sao/) complete with links, and sample documents, that may help improve contract oversight.

The key message of this guide is that contract *monitoring* should be emphasized at each step of the process – from the initial Request for Proposal (RFP) to the contract closeout. A well-developed monitoring system provides the structure, policies, and procedures needed for you to ensure that the objectives of a contract are accomplished and vendors meet their responsibilities. As the State of Washington's *Guide to Personal Service Contracting* notes, "Effective contract monitoring can assist in identifying and reducing fiscal or program risks as early as possible, thus protecting public funds." (2)

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1 *State of Vermont Workforce Report – FY 2002*, p. 55, January 2003, and *State of Vermont Workforce Report – FY 2003*, p. 72, January 2004, Department of Personnel (figures include some multi-year contracts – FY 2002 includes a multi-year health benefits contract for State employees).

2 *Guide to Personal Service Contracting*, Office of Financial Management, State of Washington, September, 2002.

Before You Go Out to Bid

When you decide that a certain service cannot be delivered with State personnel in an effective and efficient manner, you can make the decision to contract with an outside firm or organization to carry out that work.

State agencies contract out services for a variety of reasons, including:

- Reducing costs;
- Improving service quality;
- Insufficient in-house staff;
- Insufficient expertise;
- The demand for the service may fluctuate (e.g., tax return processing), making the flexibility provided by the use of vendors preferable for the agency; and,
- The General Assembly may appropriate funds to a state agency for the purpose of contracting out services.

First, however, you must meet a number of key thresholds before outsourcing this work through a personal services or privatization contract. You can find guidelines for how to proceed and evaluate whether such a contract is truly in your best interest in State law (3 V.S.A. § 342) and administrative policy (State of Vermont Agency of Administration Bulletin No. 3.5, Contracting Procedures). (*See Appendices A & B for the full documents*).

Key to this preliminary analysis is the thumbnail provided in 3 V.S.A. § 342, which says that a private contract cannot be certified by the Attorney General "unless the provisions of subdivisions (1), (2) and (3) of this subsection are met, or one or more of the exceptions described in subdivision (4) of this subsection apply." Those provisions are:

(1) The agency will not exercise supervision over the daily activities or methods and means by which the contractor provides services other than supervision necessary to ensure that the contractor meets performance expectations and standards; and,

(2) The services provided are not the same as those provided by classified state employees within the agency; and,

(3) The contractor customarily engages in an independently established trade, occupation, profession or business; or,

(4) Any of the following apply:

> (A) The services are not available within the agency or are of such a highly specialized or technical nature that the necessary knowledge, skills or expertise is not available within the agency.
>
> (B) The services are incidental to a contract for purchase or lease of real or personal property.

(C) There is a demonstrated need for an independent audit, review or investigation; or independent management of a facility is needed as a result of, or in response to, an emergency such as licensure loss or criminal activity.

(D) The state is not able to provide equipment, materials, facilities or support services in the location where the services are to be performed in a cost-effective manner.

(E) The contract is for professional services, such as legal, engineering, or architectural services, that are typically rendered on a case-by-case or project-by-project basis, and the services are for a period limited to the duration of the project, normally not to exceed two years or provided on an intermittent basis for the duration of the contract.

(F) The need for services is urgent, temporary or occasional, such that the time necessary to hire and train employees would render obtaining the services from state employees imprudent. Such contract shall be limited to 90 days duration, with any extension subject to review and approval by the secretary of administration.

(G) Contracts for the type of services covered by the contract are specifically authorized by law.

(H) Efforts to recruit state employees to perform work, authorized by law, have failed in that no applicant meeting the minimum qualifications has applied for the job.

(I) The cost of obtaining the services by contract is lower than the cost of obtaining the same services by utilizing state employees. When comparing costs, the provisions of section 343 of this title shall apply.

The Office of the Attorney General, the Agency of Administration, and the Department of Finance & Management play significant roles in Vermont's contracting system. In most cases, you must have your contract reviewed and approved by these offices before it goes out to bid. Agency of Administration Bulletin No. 3.5, Contracting Procedures, lays out the general requirements for issuing requests for proposals, evaluating bids and signing contracts – including receiving prior approvals (documented with signatures on the Form AA-14) for contracts of a certain size and scope.

In 2002, the State Auditor's Office – in conjunction with the Vermont League of Cities and Towns – developed an Internal Control Checklist for Vermont Towns (see Appendix F). This checklist may be useful to you to ensure that you have all the systems in place before bidding out for services.

However, once contract services begin, individual departments become responsible for ensuring that the vendor meets contract obligations and is paid, that records are kept, and that any disputes are resolved.

Checklist: Before You Go Out to Bid

Document the following pre-contract decisions:

Are there funds available to cover the cost of the contract?

☐ What is the type of appropriation?

☐ Has a cost/benefit analysis been conducted (i.e., is the cost of providing this service by a ☐ contractor less than if you hired public employees to do the work)?

☐ Are there available public resources (e.g., is there a budget item for this or special appropriation or grant)?

☐ Are there any legal constraints to contracting out for this service(s) (i.e., is there a statutory provision or other law that says you must use public employees)?

☐ Are you contracting with current or former State employees?

☐ Will this be an independent contractor relationship?

☐ Is there an appropriate method of compensation and billing in place?

☐ Will this be a federally funded contract, and if so will the winning group be a subrecipient or a vendor?

☐ Is prior approval to contract out for these services required by the Attorney General and/or Secretary of Administration per Bulletin No. 3.5?

☐ Do agency and/or department staff have the skills to administer/monitor the contract? If not, are personnel from other departments available to provide assistance?

What is a Contract?

In legal terms: A legally binding promise enforceable by law; an agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration; all types of agreements regardless of what they may be called, for the procurement or disposal of supplies, service, or construction; an agreement between a contracting authority and a person or business unit to provide a good, perform a service, construct a work, or lease real property for appropriate consideration.

In real-life terms: A document that you sign, which if you have not managed it properly, becomes a document that someday you wish that you had not signed.

Bidding Your Contract

Once you make the decision to contract for services – then what? For some, going out to bid can be a daunting process. This is especially true for departments that do not issue requests for proposals on a regular basis. For other departments it is a routine process.

You can choose the proper bid process from those outlined in Bulletin No. 3.5 (see checklist on the next page). Depending on the size and scope of the contract, follow different steps to receive proper approval.

According to Bulletin No. 3.5:

> **Contracts $10,000 or less:** A supervisor may enter into a contract for $10,000 or less without a formal competitive solicitation process. At the time of contract execu tion, the supervisor must place in the official contract file a signed explanation for selecting th contractor. Such explanation must include:
>
> A description of the qualifications of the contractor supporting the policy that the serv-ices or products to be provided by the vendor must be of high quality; and,
> A description of the prices charged by the vendor and an explanation as to why such charges are both cost-effective and reasonable.
>
> **Contracts greater than $10,000 but not more than $75,000:** A supervisor may enter into a contract over $10,000 but not more than $75,000 following either a formal bid or simplified bid process. A "simplified bid process" means that the agency has developed a specific and detailed scope of services for the service or product desired and has solicited written price quotations from vendors providing the specified servic-es or products. The scope of services and request for price quotations must be mailed in a timely manner to at least three potential bidders. If the agency is unsure whether the contract will fall below the $75,000 threshold, in order to avoid re-bidding the work, the use of a formal bid process is recommended.
>
> **Contracts greater than $75,000:** A supervisor may enter into a contract greater than $75,000 only after adherence to a formal bid process in compliance with the provi-sions of this Bulletin.

It is important to document your decisions at each step in the bidding process. This avoids potential disputes or litigation down the road. It's also important to clearly define for bidders, and department personnel, how the selection process will occur, how bids will be evaluated and selected, and exactly what services are to be delivered.

Holding a pre-bid conference with potential bidders may assure that the scope of services outlined in the contract is realistic for both the department and vendors. This helps vendors provide the most responsive bid possible to the State's needs.

Checklist: Bidding Your Contract

☐ Is the value of the contract $10,000 or less?
☐ If so, did you choose not to competitively bid for these services?
☐ If not, did you provide the appropriate explanation for selecting the contractor as outlined in Bulletin No. 3.5, page 8?

☐ Is the value of the contract greater than $10,000 but not more than $75,000?
☐ If so, did you undertake a formal bid?
☐ If no formal bid, did you undertake a simplified bid process?
☐ If using a simplified bid process, did you mail a detailed scope of services and a request for price quotations to at least three potential bidders?
☐ Is the AA-14 completed and signed?

☐ Is the value of the contract greater than $75,000? If so, a formal bid process must be used in accordance with Bulletin No. 3.5.

☐ Are the appropriate bid documents in order? Those documents should include:

- ☐ Scope of Services.
- ☐ Context for the Work and Management Structure.
- ☐ Bid and Contract Requirements.
- ☐ Price Quotation Form.
- ☐ The Basis for Selection.
- ☐ Documentation of Bid Announcements and Bid Advertisements.

☐ Was a pre-bid conference held between State personnel and potential vendors?

☐ Were bid documents amended as a result of the pre-bid conference?

☐ Is this a proposal for an auditing and accounting service? (If yes, then see Appendix E for a checklist specific to approving accounting and auditing service requests per 32 V.S.A § 163 (9)).

☐ Is this an information technology project costing more than $10,000? (If so, approval must be obtained from the Chief Information Officer and, in the case of I.T. services, by the Purchasing and Contract Administration Division in the Department of Buildings and General Services. Also, projects over $150,000 must have a cost benefit analysis under state 3 V.S.A. § 2222(a)9 and projects over $500,000 need an independent review under statute 3 V.S.A. § 2222(g)1-5. See Appendix D).

Selecting the Winning Bid

Now that your bids are out and responses are coming in, how do you select the best vendor? Is it the bidder with the best price? The most expertise? One way to make such an important decision is to put together a proposal review team that pulls expertise from a variety of areas.

This team should include experts in financial and performance measurement fields. You should include people with a background in the service field that the contractor is expected to deliver, too. For example, if the contractor is providing information technology services, a member of the evaluation team should have a background in designing I.T. systems. That way you know your team will take a hard look at the promised deliverables.

Ideally, you should find team members that helped to develop the initial RFP, and you may already see them as valuable members of a contract management team (see Section 5).

Departments should, as a best practice, consult with the Chief Information Officer (the Commissioner of the Department of Information and Innovation) about any contract related to information technology. In fact, it is required when contracts reach a certain size and scope. But, even if the project does not meet the requirement, it is a good idea to consult with DII staff as they may provide you with important insights and help establish proper contract milestones.

A formal bid review process should be spelled out in the RFP. The State should ensure that this process is followed and that review team members properly fill out any evaluation forms. In addition, all scores should be added properly, and double-checked, as these become part of the contract record.

The review team should be sure to interview key personnel who will be part of the vendor's project team and be fully satisfied with the answers provided by the bidder.

A contractor that appears to have an excellent proposal on paper may not look as good in response to more detailed questions before a review team. Conversely, a contractor that meets the basic minimum of the RFP requirements on paper may respond better to detailed questions regarding the services to be delivered.

Checklist: Selecting the Winning Bid

☐ Was a competitive bidding process used?

☐ Were procedures sufficient to obtain an adequate number of responses?

☐ Was the solicitation for proposals widely advertised (e.g., via the electronic Bulletin Boards, newspapers, trade journals)?

☐ Were disadvantaged firms afforded the maximum practical opportunity in the specific procurement?

☐ Does the agency's contract bid review team have the requisite experience to evaluate the proposals, including members with extensive background in the field of services to be delivered?

☐ If not, did the agency bring in experienced personnel from other parts of State government to help review and select a contractor?

☐ Were appropriate contractor screening criteria and methods used?

☐ If the bidder is a licensed practitioner (e.g. a Certified Public Accountant), is the license to practice in Vermont current?

☐ Does the bidder have appropriate experience, staffing, technical qualifications, and facilities?

☐ Can the bidder comply with the proposed or required time of delivery or performance schedule? What guarantees has the bidder provided?

☐ Does the contractor have adequate administrative and financial capability for performance? Are State taxes paid and current?

☐ Does the contractor have a satisfactory record of integrity, judgment, and performance? Did you contact personnel from other Departments in Vermont (if applicable) or personnel from other public or private institutions that used this contractor in the past?

☐ Is the contractor otherwise qualified and eligible to receive a contract under applicable laws and regulations?

☐ Did the contractor provide evidence of the appropriate licenses, registrations and certifications that would apply to the specific contracted services?

☐ Were direct interviews held with key contractor staff, as well as with members of the review team and any other agency personnel anticipated to be part of the overall contract team?

Before You Sign Off on the Contract

Now that you have picked a vendor, you need to make sure that your contract lines up with the RFP and the winning proposal. Good ways to enhance this relationship between a vendor and the State include:

- Create or revise a detailed Statement of Work;
- Write a monitoring plan that specifies what will be measured by the contract;
- Hold a post-selection meeting with the vendor as way to contribute to the vendor's understanding of what is required under the contract.
- Require a vendor to submit programmatic and/or financial reports in advance of, or concurrent with, its invoices if it is a contract requiring monthly or quarterly payments.

You can also write into the contract the type of backup material the State expects to be attached to each invoice, and make clear how bills are approved (this is also helpful as an internal business process).

For example, you should require that before authorizing a payment the contract manager verify that services were adequately delivered, that any variation of service level has been noted and adjusted for, and that the invoiced amount is consistent with the contract.

You can also have the contract require the vendor to provide specific programmatic information on a scheduled basis to determine if performance measures are being met. Programmatic reports should require information related to the performance measures (outputs and outcomes) in the contract, as well as any other deliverables.

The department should clearly establish open lines of communication. Who are the key department personnel and the key contract personnel who will make this contract work? The schedule of required meetings of this project team should be included in the contract, in order to document ongoing communication between the State and the vendor, and to have a place to resolve disputes.

Departments have a responsibility to verify the information vendors report to them and to ensure that money is spent properly. The contract must include an agreement that the department has access to and can audit vendor records, as required by Bulletin No. 3.5 and reflected in the State's standard contracting clauses. Additional steps may include requiring a signed statement that all bills and invoices reflect an accurate representation of the services provided.

Finally, the contract should outline the procedures for reporting problems and resolving disputes. The contract manager, or business manager, should provide notification of problems and a timetable for resolution to the vendor in writing. This could include multiple steps with chances to appeal directly to the Commissioner's Office or Agency Secretary (depending on where the contract originates). If those appeal avenues are exhausted, there should be a clause in the contract to agree to mediation. However, if problems are not resolved you should notify the Attorney General's Office and consider taking actions to compel the vendor to comply (e.g., financial consequences, contract cancellation).

Checklist: Before You Sign Off on the Contract

☐ Is the scope of work clearly written and defined in the contract?

☐ Are performance measures required and do they satisfy the budgeted outcomes?

☐ Does the contract include a detailed schedule of performance measures the contractor will provide to the State?

☐ Does the contract include a schedule of all operational and financial reports due from the vendor?

☐ Are hold harmless and indemnification provisions included?

☐ Are liability and industrial insurance provisions adequate?

☐ Are remedies and sanctions appropriate to safeguard the State's interests and ensure performance? Do contract termination provisions protect the State's interests?

☐ Does the contract include a dispute resolution process that can be used to address the alleged failings of any party during the contract period?

☐ Has the State considered all known external factors – including pending litigation – to ensure that these factors do not put the State at risk of paying unnecessary penalties or fines due to potential delays?

☐ Was an appropriate compensation method selected and identified in the contract?

☐ If coordination with other agencies is an issue, is it outlined in the contract?

☐ Do you have a plan to notify all bidders of the final decision?

☐ Did you review all potential conflicts of interests in the selection of the contractor or the ongoing evaluation of the contractor?

☐ Is the contract being signed and executed by all parties *before* the date services are to begin?

☐ Are the State of Vermont's "Attachment C – Customary State Contract Provisions" adequate, or do they need to be enhanced by the department's counsel?

Managing Your Contract

Good management requires follow-up, feedback, and enough awareness of what is occurring to eliminate surprises. You can lessen the risks associated with contracting out services by developing an effective contract monitoring system.

To do that, departments should ensure that anyone who is part of the monitoring team is properly trained before going live with a system designed to evaluate a vendor's performance. The next step is to put in place written policies and procedures to serve as a guide in ensuring a consistent, high-quality contract monitoring process (See Section 5a below).

Every good monitoring plan should reflect the overarching goals and outcomes that have been established by the department. You should ensure that outcomes tie back to performance measures, not only to determine the services to be delivered, but also that these services have a positive impact on the lives of Vermonters.

This plan should also detail how the department will monitor the vendor and who is responsible to carry out the monitoring, and how all findings and recommendations will be documented. Contract files should be organized so that someone outside of the department could reconstruct and understand the history of the contract in the absence of the contract administrator (see Section 5b).

Departments that distribute federal or grant funds have an obligation to ensure that recipients adequately perform all agreed-upon services. The guidelines for monitoring federal subrecipients are found in the Agency of Administration Bulletin 5.0 Single Audit Policy for Subgrants: Compliance with OMB Circular A-133 (http://www.adm.state.vt.us/bulletins.htm). (*See Appendix C*)
You should consider a monitoring plan that consists of both regular and random inspections

What skills does a contract manager need?

A contract manager's skills are developed through continuing education and practice. A successful contract manager has developed skills in three main areas: technical, conceptual, and human relations.

Technical skills are demonstrated by competently performing the tasks required, such as preparing and issuing solicitations, preparing bids and proposals, preparing or analyzing terms and conditions, or analyzing procurement requirements and supplier capabilities. Training for these skills can be accomplished in degree, certificate, professional continuing education, or specialized programs.

Conceptual skills relate to the manner in which the contract manager visualizes the contract's organization in terms of the agency's or company's goals. These skills involve the ability to see and use the "big picture" for greater organizational and personal success.

Human relations skills focus on the "people" aspect of contract management. Effective performance requires the cooperation of many others over whom the contract manager has little or no organizational control. Dealing with government and contractor representatives from a diverse range of disciplines requires strong relational and communication skills. Many contract managers consider competency in human relations to be the most important skill for the future of their jobs and careers.

— *Source: National Contract Management Association*

of services and vendor. On-site monitoring visits, if applicable, are most effective when based on a specific methodology or a checklist of review items.

Performance reinforcements, such as incentives and consequences for poor performance, are helpful in obtaining optimal performance from the vendor. Financial incentives can be one of the most effective methods of inducing a vendor to perform a desired service to a high quality level. Consequences for poor performance can include financial penalties or taking disciplinary action. Department officials should establish reasonable damages based on reasonable standards. If either is unreasonable, it is likely to limit competition and lead to vendors charging higher amounts to cover the greater risk.

Finally, put in place formal, written closeout procedures at the completion stage so that important elements are not overlooked, to assure that all services have been completed to your satisfaction. (See Section 6).

A department should also take time at the end of every contract to evaluate its own performance. Were its methods of evaluating the vendor effective and useful? Did they document all the information? Were all problems addressed before the end of the contract? Was the data collected during the contract useful? How can your process be improved?

5a. Policy & Procedures Manual for Contract Management

The American Management Association and the National Institute of Governmental Purchasing recommend that many of the following subjects be included in policy and procedure manuals. Sometimes it is good to put this information in contract language:

- Roles and responsibilities of the agency personnel – define who is responsible for contracting activities and who has the authority to take particular actions;
- Contract correspondence – guidance on documenting interaction with the vendor;
- Reports detailing contract monitoring efforts – types of reports and the information that should be included;
- Conflicts of interest – define a conflict of interest and steps that should be taken to avoid them;
- Documentation of contract administration decisions;
- Subcontract administration – define the agency's role when work is subcontracted by a vendor;
- Standard contract terms and conditions of contracts;
- Monitoring of contract performance – guidance on assessing risk of poor performance and the methods that should be used to monitor performance;
- Contract completion activities – assuring that all State property is returned including security items, that there are no outstanding claims, and that the vendor has met all the deliverables of the contract;

- Dispute resolution – guidance on how disputes between the agency and vendor will be resolved, including what offices or officials should be involved and what documentation should be used; and,

- Professional development of contract personnel.

5b. Organized Contract Files

Contract files should hold all the information necessary to know what was expected and what was received under the contract. At a minimum, files should contain the following:

- RFPs, and other contract materials as required by Bulletin No. 3.5;
- Signed copy of the contract;
- Modifications to the contract;
- Contract monitoring plan;
- Contingency plan;
- Sources solicited;
- Method of evaluation and award;
- Meeting minutes;
- Contract correspondence including letters, memos, e-mails and notes from telephone conversations;
- Reports from any on-site visits;
- Performance reports;
- Records of complaints and vendor disputes and resolutions; and,
- All invoices and vouchers.

Reviewing Invoices for Payment

Contract payment is the process by which the contractor submits invoices for reimbursement of service and receives payment. The contract manager, who is responsible for evaluating performance of the contract, must carefully audit the contractor's requests for payment to verify the accuracy of all charges. The contract manager should determine if the number of hours or costs is commensurate with the services or deliverables received. The contract manager must also verify that rates for the contractor or subcontractor(s) are as stated in the contract. All documentation submitted must be verified to assure that all charges for the services are justified.

Travel expenses must also be verified to be consistent with contract terms. Most state contracts require reimbursement at current state travel regulation rates. Receipts should be attached for travel expenses, if required by the contract.

The contract manager must be conscientious to prevent any overpayment to the contractor. Contract overpayment is any payment in excess of the amount agreed upon for work performed or in violation of the terms of the contract. The contract manager must verify receipt of services in accordance with the contract prior to authorizing payment of invoices. If services received are not acceptable or not in accordance with the contract terms, the contract manager should authorize payment only for those services received that are in accordance with the contract terms and conditions. The contract manager may withhold payment for all other charges until the contract terms and conditions have been met.

If the cost charges are acceptable, the contract manager signs the invoice as "approved for payment" and forwards it to the fiscal office, or business manager, for payment. No payment may be made to a contractor until this invoice process has been followed and an authorizing signature obtained. Additionally, according to 32 V.S.A. §§ 463-464, the Commissioner of Finance & Management is given broad authority to require all bills to be fully itemized and accompanied with vouchers. For example, 32 V.S.A. § 463 reads: *"The commissioner of finance and management shall require all bills presented to him for allowance to be fully itemized and accompanied, as far as possible, with vouchers."*

The Commissioner is also given the authority to require that anyone who bills the State for services must swear, under the penalty of perjury, that those amounts are accurate. This authority is granted in 32 V.S.A. § 464, which reads:

> *"When required by the commissioner of finance and management and before payment therefore is made by the state, all claimants for compensation for services rendered or expense incurred for the state shall furnish the commissioner of finance and management itemized statements in such form as the commissioner may from time to time prescribe and shall be verified by written declarations that they are made under the pains and penalties of perjury, and a person who willfully makes a false statement shall be guilty of perjury and be punished accordingly. However, the commissioner of personnel shall exercise such authority as necessary to carry out the payroll function."*

Source: Guide to Personal Service Contracting, Office of Financial Management, State of Washington, September, 2002, pages 8-5 to 8-6. (http://www.ofm.wa.gov/contracts/psc/psctoc.htm) as well as Vermont State Statutes.

Checklist: Managing Your Contract

☐ Were program and contractor risks assessed prior to entering into a contract (e.g., where are the potential weak points in the financial, service delivery and communication systems – both on the side of the contractor and the State)?

☐ Was the risk assessment used to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight?

☐ Are all potential contract managers – from program directors to financial personnel – properly trained and versed in the service area to be provided by the contractor?

☐ Are contract monitoring procedures in writing, and do they include a detailed segregation of oversight between program and fiscal performance?

☐ Does your department have a back-up plan in case a vendor defaults on its obligations, or is found to be incompetent to provide the services according to the contract?

☐ Does the monitoring plan have a complete list of job tasks and monitoring activities that includes the monitoring that will occur, how often and how it is to be documented and filed with the contract documents?

☐ Does the contract require that all independent evaluations, as well as contract correspondence, be kept with the contract file documents?

☐ Does the department's monitoring plan include unannounced, on-site visits?

☐ Does the department's contract monitoring plan include a mechanism to gauge vendor feedback?

☐ Does the department's monitoring plan include financial incentives, or consequences, to encourage a vendor to reach high standards?

☐ Does the department's monitoring plan have a closeout procedure to ensure that all aspects of the contract – monitoring, performance, delivery, and cost – can be tracked and evaluated?

☐ Does the contract monitoring plan include a post-contract financial audit to ensure that all programming and fiscal performance requirements were met by both contractor and the department?

Closing Out Your Contract

Now that you've completed a contract cycle, how do you close out the process and start all over again with an eye toward improving (if necessary) the process? First of all, national standards recommend that formal, written closeout procedures be in place so that important elements are not overlooked.

A good contract closeout checklist will help you to be sure that you have received what you paid for, and that no outstanding work remains. It's like a punch list at the end of a construction project and it should be included in the contract file when closing contracts. Several contract closeout steps are related to monitoring the performance of the vendor, while others are more administrative in nature.

Departments should use the contract closeout checklist to evaluate the vendor's performance and how well they monitored the vendor. These evaluations should provide the feedback necessary to determine whether a vendor should be awarded contracts in the future and whether the agency should improve its contract monitoring system.

Contracts subject to renewal must be reviewed before you make a decision to renew, and any closeout problems should be addressed before an extension is requested. To complete this task, you should consider conducting a programmatic review and a financial audit.

If you monitor the vendor throughout the contract period, the closeout process should be simple. Your final product will distinguish vendors with positive and negative performances. You can also evaluate whether there is enough risk to warrant conducting a financial audit, or whether such an audit is required by law or funding source.

Checklist: Closing Out Your Contract

☐ Have all invoices been paid?

☐ Has all property been returned?

☐ Have all deliverables been accepted and inspected?

☐ Are there any pending disagreements or lawsuits?

☐ Have all required reports been received?

☐ Has all contract auditing been completed (if necessary)?

☐ Are there any outstanding classified materials?

☐ Are there any outstanding changes or amendments?

☐ Have all security badges and keys been returned?

☐ Have all disallowed costs been settled?

☐ Have all post-contract reviews and meetings been held, and minutes of those meetings placed in the contract file?

Lessons from Other States

Many state governments have developed well-documented contract management and oversight systems in recent years. The State Auditor's Office contacted seven other states to determine their systems of contract management.

Central purchasing offices in Alabama, Florida, North Carolina, South Carolina, Georgia, Tennessee, and Virginia are usually involved with state agencies in the solicitation of bids and the selection of vendors, but contract management is usually the responsibility of the agencies. The requirements related to contract monitoring imposed by the central purchasing offices vary significantly. Statutory requirements for contract monitoring range from no mention in the law to specific contract management policies. Finally, some offices offer guidelines on contract administration to their state agencies, while others do not.

Contact monitoring is a topic that other states have also been reviewing in recent years. Some examples are:

A legislative audit in Montana found that contract monitoring varied substantially among state agencies and that its effectiveness depended greatly on the agency's monitoring experience and expertise.

The Texas State Auditor's Office recently identified contract administration as one of five high-risk areas in state government. To improve contract administration, the Office recommended that their legislature pass a bill that included establishing a contract manager training and certification program, requiring agencies to consult with an advisory team when developing performance measures, and requiring agencies to report the results of reviews on contractor compliance.

A program evaluation on service contract administration by the Kentucky Legislative Research Commission reported that state agencies expressed a need for training, contract administration policies and guidelines, and general assistance about contract monitoring from their central procurement agency.

A report on privatization by the Tennessee Comptroller of the Treasury recommended that agencies develop contract monitoring systems that provide information on whether contractors are complying with the contract terms, including key elements in contracts such as performance standards, monitoring provisions, penalty clauses, and contingency plans.

The State of Iowa, in a Service Contracting Guide similar to Vermont's Bulletin No. 3.5, makes contract monitoring a standard clause in each and every State contract. Specifically, Iowa requires agencies and departments to do the following:

> *Monitoring clause. The contract shall include a clause or clauses describing the methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. Monitoring should be appropriate to the nature of the contract as determined by the department or establishment.*
>
> *Acceptable methods of monitoring may include the following:*
>
> > *One hundred percent inspection.*
> > *Random sampling.*
> > *Periodic inspection.*
> > *Customer input.*
> > *Invoices itemizing work performed.*
> > *A monitoring plan determined by the department or establishment to be appro priate for purposes of the service contract and including methods to effectively oversee the service provider's compliance with the service contract by the department or establishment.*
>
> *Review clause. The contract shall include a clause or clauses describing the methods to effectively review performance of a service contract including, but not limited to, performance measurements developed pursuant to Iowa Code Chapter 8E. Performance measurement should be appropriate to the nature of the contract as determined by the department or establishment. The measures below are not intended as an exhaustive or prescriptive list; they are provided as examples.*
>
> *The review clause for performance may include:*
>
> > *Outcome measures.*
> > *Output measures.*
> > *Efficiency measures.*
> > *Quality measures.*
> > *A review plan determined by the department or establishment to be appropriate for the purpose of the service contract and including methods to effectively review performance of a service contract.*

Summary of Checklists

1. Before You Go Out to Bid

What services are being contracted? _____

Do state agency personnel typically perform them? _____

What type of contract is this?

- ☐ Client Service
- ☐ Personal Service
- ☐ Financial Service

1a. Document the following pre-contract decisions:

☐ Are there funds available to cover the cost of the contract?

☐ What is the type of appropriation?

☐ Has a cost/benefit analysis been conducted (e.g., is the cost of providing this service by a contractor cost less than if you hired public employees to do the work)?

☐ Are there available public resources (e.g., is there a budget item for this or special appropriation or grant)?

☐ Are there any legal constraints to contracting out for this service(s) (e.g., is there a Statutory provision or other law that says you must use public employees)?

☐ Are you contracting with current or former State employees?

☐ Will this be an independent contractor relationship?

☐ Is there an appropriate method of compensation and billing in place?

☐ Will this be a federally funded contract, and if so will the winning group be a subrecipient or a vendor?

☐ Is prior approval to contract out for these services required by the Attorney General and/or Secretary of Administration per Bulletin No. 3.5?

☐ Do agency and/or department staff have the skills to administer/monitor the contract?

☐ If not, are personnel from other departments available to provide assistance?

2. Bidding out Your Contract

☐ Is the value of the contract $10,000 or less?

☐ If so, did you opt not to competitively bid for these services?

☐ If not, did you provide the appropriate explanation outlined in Bulletin No. 3.5, page 8?

☐ Is the value of the contract greater than $10,000 but not more than $75,000?

☐ If so, did you undertake a formal bid?

☐ If so, did you undertake a simplified bid process?

☐ If using a simplified bid process, were pre-qualified vendors used?

☐ Is the AA-14 completed and signed?

☐ Is the value of the contract greater than $75,000? If so, a formal bid process must be used in accordance with Bulletin No. 3.5.

☐ Are the appropriate bid documents in order? Those documents should include:

- ☐ Scope of Services.
- ☐ Context for the Work and Management Structure.
- ☐ Bid and Contract Requirements.
- ☐ Price Quotation Form.
- ☐ The Basis for Selection.

☐ Was a pre-bid conference held between State personnel and potential vendors?

☐ Were bid documents amended as a result of the pre-bid conference?

☐ Is this a proposal for an auditing and accounting service? If yes, then see Appendix E for a checklist specific to approving accounting and auditing service requests per 32 V.S.A. §163 (9).

☐ Is this an information technology project costing more than $10,000? (If so, approval must be obtained from the Chief Information Officer and, in the case of I.T. services, by the Purchasing and Contract Administration Division in the Department of Buildings and General Services. Also, projects over $150,000 must have a cost benefit analysis under state 3 V.S.A. § 2222(a)9 and projects over $500,000 need an independent review under statute 3 V.S.A. § 2222(g)1-5. See Appendix D).

3. Selecting the Winning Bid

☐ Was a competitive bidding process used?

☐ Were procedures sufficient to obtain an adequate number of responses?

☐ Was the solicitation for proposals widely advertised (e.g., via the electronic Bulletin Boards, newspapers, trade journals)?

☐ Were disadvantaged firms afforded the maximum practical opportunity in the specific procurement?

☐ Does the agency's contract bid review team have the requisite experience to evaluate the proposals, including members with extensive background in the field of services to be delivered?

☐ If not, did the agency bring in experienced personnel from other parts of State government to help review and select a contractor?

☐ Were appropriate contractor screening criteria and methods used? Consider the following contractor standards:

- ☐ If the bidder is a licensed practitioner (e.g. a Certified Public Accountant), is the license to practice in Vermont current?
- ☐ Does the bidder have appropriate experience, staffing, technical qualifications, and facilities?
- ☐ Can the bidder comply with the proposed or required time of delivery or performance schedule? What guarantees has the bidder provided?
- ☐ Does the contractor have adequate administrative and financial capability for performance? Are State taxes paid and current?
- ☐ Does the contractor have a satisfactory record of integrity, judgment, and performance? Did you contact personnel from other Departments in Vermont (if applicable) or personnel from other public or private institutions that used this contractor in the past?
- ☐ Is the contractor otherwise qualified and eligible to receive a contract under applicable laws and regulations?
- ☐ Did the contractor provide evidence of the appropriate licenses, registrations and certifications that would apply to the specific contracted services?
- ☐ Were direct interviews held with key contractor staff, as well as with members of the review team and any other agency personnel anticipated to be part of the overall contract team?
- ☐ Was a numeric scoring system used (i.e, rating on a scale from 1 to 10)?
- ☐ Was a subjective, narrative system used (i.e. narrative rating of impressions and direct questions posed by the review team)?

☐ Was a public bid opening held?

☐ Was a non-competitive process used? Explain reasons for choosing the contractor(s).

☐ Was a sole source selection method used? Explain reasons for choosing the contractor(s).

4. Before You Sign Off on Your Contract

☐ Is the scope of work clearly written and defined?

☐ Are performance measures required and do they satisfy the budgeted outcomes?

☐ Does the contract include a detailed schedule of performance measures the contractor will provide to the State so its performance can be tracked and evaluated during the term of the contract?

☐ Does the contract include a schedule of all operational and financial reports that the vendor is to provide to the State?

☐ Are hold harmless and indemnification provisions included?

☐ Are liability and industrial insurance provisions adequate?

☐ Are remedies and sanctions appropriate to safeguard the State's interests and ensure performance?

☐ Do contract termination provisions protect the state's rights?

☐ Does the contract include a dispute resolution process that can be used to address the failings of any party during the contract period?

☐ Has the State considered all known external factors – including pending litigation – to ensure that these factors do not put the State at risk of paying unnecessary penalties or fines due to potential delays?

☐ Does the contract have any additional language – other than the audit clauses in Attachment C – that ensures any State representative access to all supporting evidence and reports?

☐ Was an appropriate compensation method selected and identified in the contract?

☐ Is coordination with other agencies an issue?

☐ Do you have a plan to notify all bidders of the final decision?

☐ Did you review all potential conflicts of interests in the selection of the contractor or the ongoing evaluation of the contractor?

☐ Is the contract being signed and executed by all parties *before* the date services are to begin?

☐ Are the State of Vermont's "Attachment C – Customary State Contract Provisions" adequate, or do they need to be enhanced by the department's counsel?

5. Managing Your Contract

☐ Were program and contractor risks assessed prior to entering into a contract (e.g., where are the potential weak points in the financial, service delivery and communication systems – both on the side of the contractor and the State)?

☐ Was the risk assessment used to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight?

☐ Are all potential contract managers – from program directors to financial personnel – properly trained and versed in the service area to be provided by the contractor?

☐ Are contract monitoring procedures in writing, and do they include a detailed segregation of oversight between program and fiscal performance?

☐ Does your department have a back-up plan in case a vendor defaults on their obligations, or is found to be incompetent to provide the services according to the contract?

☐ Does the monitoring plan have a complete list of job tasks and monitoring activities that includes the monitoring that will occur, how often and how it is to be documented and filed with the contract documents?

☐ Does the contract require that all independent evaluations, as well as contract correspondence, be kept with the contract file documents?

☐ Does the department's monitoring plan include unannounced, on-site visits?

☐ Does the department's contract monitoring plan include a mechanism to gauge vendor feedback?

☐ Does the department's monitoring plan include financial incentives, or consequences, to encourage a vendor to perform the service?

☐ Does the department's monitoring plan have a closeout procedure to ensure that all aspects of the contract – monitoring, performance, delivery, and cost – can be tracked and evaluated?

☐ Does the contract monitoring plan include a post-contract financial audit to ensure that all programming and fiscal performance requirements were met by both contractor and the department?

6. Closing Out Your Contract

☐ Have all invoices been paid?

☐ Has all property been returned?

☐ Have all deliverables been accepted and inspected?

☐ Are there any pending disagreements or lawsuits?

☐ Have all required reports been received?

☐ Has all contract auditing been completed (if necessary)?

☐ Are there any outstanding classified materials?

☐ Are there any outstanding changes or amendments?

☐ Have all security badges and keys been returned?

☐ Have all disallowed costs been settled?

☐ Have all post-contract reviews and meetings been held, and minutes of those meetings placed in the contract file?