



# State of North Carolina

## Contract Administration and Monitoring Guide

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Department of Administration  
Division of Purchase & Contract  
<http://www.pandc.nc.gov>



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## Abbreviations

Abbreviation	Meaning
CAMG	Contract Administration/Monitoring Guide
HUB	Historically Underutilized Business
IFB	Invitation for Bids
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
P&C	Division of Purchase and Contract, Department of Administration
RFQ	Request for Quotation
RFP	Request for Proposal
SOW	Scope of Work
SPO	State Purchasing Officer

## **Contract Administration/ Monitoring Guide**

The purpose of the Contract Administration/Monitoring Guide (CAMG) is to provide agency contract administrators guidance on improving existing contract management processes and practices and to meet the requirements of Senate Bill 1213. Throughout this guide, the term Administrator, Contract Monitor or Contract Manager are used interchangeably.

Planning for contract monitoring should begin even before issuance of the solicitation. A good contract manager ensures the contract requirements are satisfied, the goods and services are delivered in a timely manner, the financial interests of the agency and State are protected, and consults with general counsel where warranted.

Each agency is unique, and the specific requirements of each contract vary; therefore, the information in this Guide is intended to provide flexibility, as appropriate, to ensure each contract gets the tracking and monitoring that serves the best interest of the State. The Guide provides a framework that agencies must use to make and record contract administration decisions over the life of the contract.

The guide is designed to supplement existing statutory contracting requirements and individual agency rules, policies and procedures. Each agency is independently responsible for implementing and documenting sound business contract monitoring procedures in this guide, in accordance with applicable State laws, regulations, policies and procedures.

The integrity of the public purchasing system demands that goods and services be furnished, received, invoiced and paid as specified in the contract. Contract administration includes all actions taken by the State relative to a specific contract after the award is made, as outlined in this guide. Questions concerning this guide and the contract administration/monitoring process should be directed to the ("Division of Purchase and Contract"), Contract Compliance and Training Manager.

After issuance of a contract document, including those awarded by the Division of Purchase and Contract the agency is responsible for contract administration to assure that the services or goods are provided in accordance with the terms of the contract. Planning and proactive management of a contract are crucial to effective contract administration. Vendor noncompliance and other relevant experiences related to contract performance are to be reported on a Vendor Complaint Form or on the Contract Closeout Checklist.

## 1. What is a Contract

Most simply, a contract is an agreement between two or more parties that creates an obligation to perform (or not perform) a particular action. It is an agreement enforceable by law. In addition to creating obligations by and to external parties (vendors), a written contract is a record that serves as an internal check and balance permitting reviews of procurement activity for improper relationships, fraud, conflict of interest issues, and regulatory requirements.

A legally enforceable written contract requires:

1. An Offer (specific material/service, specifications and deliverables)
2. An Acceptance
3. Consideration (the value received and given)
4. Execution by competent parties with the authority to bind the company

## 2. Contract Formation

Contract formation is a series of pre-award procurement activities between an agency and a contractor that results in a contract. Other terms interchangeable are pre-solicitation and contract development phase. The contract formation activities serve as the preamble to these internal activities that will follow once the contract is executed.

The procurement department offers a value to the contract formation or pre-award process. It is important that they play a hands-on role in the entire contract formation process. During this process, the procurement department can assist in developing specific contract goals and provide the internal customer (end user) with contract formation tools such as specifications, price, delivery types, selection and evaluation criteria, contract templates, forms, and general types of contracts that contain contract clauses designed to effectively minimize and manage contract risks.

Excellence in contract management in the contract formation or pre-solicitation phase begins with specifying the need, establishing contract goals, identifying potential risk when using procurement tools to develop specifications and a contract that effectively addresses the established objectives. Components that make up the pre-solicitation process include the pre-award orientation or pre-meeting with applicable program and contracting officials prior to the post award orientation conference so that there is a clear understanding of their specific responsibilities and restrictions in administering the contract. The time spent on contract formation will reduce the amount of time spent administering contracts. It will also aid in the development of a plan for monitoring contract performance.

**Contract monitoring points include, but are not limited to: deliverables, timetables, payment triggers, quality of deliverables and the information and reports the vendor must produce so performance can be monitored. The contract cannot be properly monitored and ENFORCED unless these points are incorporated into the contract at contract construction.**

### **3. Scope of Work, Intent of Contract, Duration, etc.**

The awarded supplier will receive either a signed contract or a purchase order (or both) from the state entity. The purchase order and/or signed contract will include the terms, conditions and specifications governing the supplier's contract performance. No supplier is authorized to begin contract performance prior to receiving a signed contract or purchase order from the state entity. Any required bonds (payment, performance, fidelity, insurance certification, etc.) or letters of credit must also be promptly submitted to the state entity in accordance with the terms of the contract.

The supplier's receipt of a purchase order from the state entity for a one-time purchase, a lease or installment purchase, or a fixed quantity contract, authorizes shipment in accordance with its terms. The supplier's receipt of a Notice of Award from the state entity establishing a term contract does not authorize any shipment. Shipment against term contracts is only authorized by the supplier's receipt of a purchase order from the state entity. The purchase order number or contract number must be shown on all bills of lading, packing slips, back orders, invoices, and other transactional documents. Some state entities may request the supplier to ship against a term contract prior to the issuance of a purchase order. However, any shipments made pursuant to such a request and before the issuance/receipt of a purchase order, are made at the supplier's sole risk.

### **4. Managing Contract Performance**

Tracking the performance of the contractor is the principal function of proper contract monitoring and administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for the agency to be aware of and address any problems or issues promptly.

Not every contract will require the same level of monitoring. All contracts should be reviewed periodically within the contract term taking into account size or contract value, associated risk, sensitivity (contracts receiving high volume of public scrutiny), and type of contract and services being provided. Small dollar value or less complex contracts may require minimum monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary by the agency. Conversely, large dollar contracts may not require extensive monitoring if the items or services purchased are not complex and the agency is comfortable with the contractor's performance and the level of risk associated with the contract. When assessing risks to determine the level of monitoring, the identified risks should be linked to the monitoring plan.

This function is separate from, but closely related to, the role of project manager. Typically, a project manager plans and organizes those resources required by one or more parties to a project, and coordinating use of those resources, as needed, for completion of the project. More complex projects may involve multiple contracts, and simple projects may not have a separate project manager assigned.

## **5. Contract Administrator Responsibilities**

Primary responsibilities of the Contract Administrator include, but are not limited to:

1. Understanding the contract terms and conditions including the scope and performance indicators.
2. Managing any changes to the contract (change orders, amendments, addendums, renewals, extensions, terminations, etc.).
3. Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements.
4. Receiving and responding to communications between the agency and the contractor. Coordinating and scheduling meetings, if needed. Monitoring contract sales data, if appropriate.
5. Participating in resolving disputes in a timely manner.
6. Exercising contractual remedies, as appropriate, when a contractor's performance is deficient.
7. Ensuring contractor's performance evaluation form is completed and filed appropriately. If the value of the contract is greater than \$10,000, then a copy must be submitted to P&C for inclusion in a centralized repository. Monitoring invoice payment reports from accounting for timeliness and accuracy.
8. Documenting all actions taken regarding the contract and maintain such documentation as part of the official contract file.
9. Closing out the contract file.

### **5a. The Contract Administrator shall avoid the following:**

1. Asking the contractor (inappropriately or unknowingly) to perform outside of the scope of work specified in the contract without adequate documents agreed to by both parties.
2. Awarding, agreeing to, modifying, increasing the scope and dollar value of, or signing any contract directing change without adequate documents agreed to by both parties.
3. Issuing instructions to a contractor to start or stop work except in an emergency situation without adequate written documents.
4. Including personal opinions, in any correspondence, including emails.

### **5b. Examples of things to avoid include, but are not limited to:**

1. Making commitments or promises (oral or written) to any contractor.
2. Authorizing delivery or disposition of governmental-furnished property.
3. Obligating the Government beyond the terms and conditions of the contract.
4. Approving items of cost not authorized by the contract.
5. Granting deviations from or waiving any of the terms and conditions of the contract.
6. Changing the period of performance.
7. Authorizing subcontracting or the use of consultants.
8. Authorizing the use of overtime.

It is strongly encouraged for each agency to have separation of duties between project management and contract administration. However, depending on the agency structure, a person may be responsible for a dual role.

## 6. Contract Monitoring

Contract monitoring is a key component of contract administration and is the key to enforcing the contract. The goal of contract monitoring is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. An effective contract monitoring system mitigates risk, with risk defined as the probability of an event or action having an adverse effect on a state agency. In addition, effective contract monitoring minimizes or eliminates problems and potential claims and disputes.

## 7. Determining What to Monitor

When assigned to administer/monitor a contract, you should immediately review the statement of work and other contract terms, including contractor compliance requirements. All of these requirements are deliverables which the contractor and agency agreed to when the contract was executed or the purchase order was issued. Design the monitoring plan to focus on items that are most important. Generally, this means to focus the monitoring on the outputs and outcomes that result from the contract.

The extent of contract monitoring will not be the same for all contracts. The level of contract monitoring should be consistent with the complexity and level of risk of the contract, its term, and dollar value. Early in the procurement process, identify staff to participate in contract monitoring. The term “contract manager” may also mean “contract administrator”, dependent upon the organizational structure. Contract monitoring activities may include:

1. Determining the sequence of activities, dependencies, required outcomes, and acceptable performance levels.
2. Developing a plan, including start and end dates for each performance component, including milestones with accompanying timeframes, monitoring and reporting requirements.
3. Establishing clear lines of communication, reporting specific individuals who may interact directly with the contractor.
4. Providing access to state facilities, equipment, data, staff, materials and information. Monitoring contractor activity on a specified frequency to identify problem areas.
5. Communicating with the contractor on a regular basis to review progress, discuss problems and necessary changes.
6. Addressing actual problems and resolutions.
7. Maintaining documentation of monitoring activities and resolution of identified defaults.
8. Verifying receipt of specified services, goods and reports.
9. Verifying that all performance measures and reports are completed in a satisfactory manner in accordance with the contract.

Whether a contract administrator performs these activities independently or under the direction of someone else depends on the organizational structure of the agency and the complexity and value of the contract.

*Contract Monitoring Checklist is located at <http://www.pandc.nc.gov/divforms>.*

## 8. Risk Assessment

Limited resources require the use of risk assessment to assess contract performance because there is not sufficient time to oversee all aspects of a contract. An effective risk assessment model will help focus monitoring resources on contractors or performance activities with the highest risk of noncompliance. First, identify risk factors. Risk factors are indicators that help evaluate the risk of the contract or project objectives not being achieved. **General risk factors to be considered in development of the contract may include, but are not limited to:**

1. The contractor's past performance (and past performance of similar contractors).
2. The impact of poor contractor performance on agency services.
3. Turnover in key contractor personnel.
4. Independent audit coverage (OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations").
5. Prior complaints or inquiries.
6. The dollar amount of the contract.
7. Factors from desk reviews (See Section 12.b.2), such as the variance between expected and actual performance and budget.
8. Significant problems with payment requests.
9. Results of any desk reviews or expenditure document reviews.
10. Results of monitoring visits (including those completed by other agencies or divisions within the same agency that contract with the same contractor).
11. The experience level of the contractor with the type of work to be performed.
12. Any requirements not met shall be addressed, documented and maintained in the contract administration file.

Risk factors during contract performance might include, for example:

1. Multiple schedule delays or slow deliveries.
2. Frequent personnel changes or juggling of work assignments.
3. Vague or evasive responses to inquiries and status requests.
4. Lack of progress on completing deliverable on which other parts of a project depend.
5. Requests for milestone payments without finalizing deliverables.
6. Downplaying the seriousness of problems and their impact on project completion.
7. Lack of preparation or planning for upcoming requirements or activities.
8. Failure to return calls or respond to information requests.

## 9. Establishing and Maintaining a Contract Administration File

It is the responsibility of each Contract Administrator to ensure all contractual obligations are met and contract monitoring is documented. Keeping a complete master contract administration file is critical and must be maintained by the Agency. This file will provide a basis for settling claims and disputes should they arise in administrative or court actions. Throughout the life of the contract, the contract administration file will provide a single, easily accessed repository for those documents related to contract duties and performance, and it should contain such things as:

1. A copy of the current contract and all modifications.
2. A copy of all specifications, drawings or manuals incorporated into the contract by reference.
3. A reference list or a list of prior contracts with this specific vendor (if they offer valuable historical data).
4. The solicitation document, the contractor's response, evaluation determination, and the notice of award document.
5. A list of contractor submittal requirements.
6. A list of government furnished property or services.
7. A list of all information furnished to the contractor.
8. A copy of the post-award conference summary, if conducted.
9. A schedule of compliance review and internal correspondence, if applicable.
10. A copy of all general correspondence related to the contract.
11. The originals of all contractor data or report submittals.
12. A copy of all routine reports required by the contract such as sales reports, pricing schedules, approval requests, and inspection reports.
13. A copy of all notices to proceed, to stop work, to correct deficiencies, or to change orders.
14. A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules.
15. The records/minutes of all meetings, both internal and external, including sign-in sheets and agendas.
16. A copy of all monitoring reports: contract manager's status to supervisor, site visits, desk reviews, and expenditure documentation reviews.
17. A copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments.
18. A copy of all backup documentation for contractor payment or progress payment; and copies of any audits.

**NOTE: Sometimes in advance of providing the contract file to an individual making a public records request, the file will need redaction of confidential material. Refer to the Purchase & Contract Administrative Code 01 NCAC 05B .1501 CONFIDENTIALITY (<http://www.pandc.nc.gov/admcode.htm>) and/or seek legal guidance.**

Agencies must maintain an original of all contracts in a central repository. This allows contract managers to reference past or current contracts for useful information relating to a current project.

In accordance with 01 NCAC 05B .1901 RECORD MAINTENANCE, documentation shall be retained for a minimum of 5 years after the expiration date of the contract. In addition to North Carolina record retention, the agency contract administrator shall adhere to any federal record retention requirements, if applicable, and, shall include written documentation of contract monitoring procedures indicated in this guide.

**Use the Contract File Checklist to establish your contract file. Contents should include but are not limited to items on the list.**

*Contract File Checklist is located at <http://www.pandc.nc.gov/divforms>.*

## **10. Developing a Contract Monitoring Plan**

A Contract Monitoring & Administration Plan must be used by the agency with each of its contracts and may be adapted, as needed. The use of this Plan helps to assure proper management of the contract and provides a record that professional management practices were used in the monitoring and administration of the contract. This Plan supplements, and is not a replacement of, your established monitoring processes and procedures.

*Contract Monitoring & Administration Plan is located at <http://www.pandc.nc.gov/divforms>.*

## **11. Contract Kickoff Meeting**

*A contract kickoff (post-award or work plan) meeting, if performance includes multiple activities or covers a span of time, is held prior to the work start date with representatives of both parties (both supplier and state entity) in attendance. At a minimum, Contract Administrator of both parties must be present. This meeting is an orientation for the supplier to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of the parties. It is an opportunity to clarify and resolve any potential misunderstandings. For small-value contracts or those of very short duration, a face-to-face meeting may not be necessary, but at least a telephone conference should be held with an opportunity for questions and clarifications.*

The contract administrator should establish the time and place of the meeting, prepare an agenda, and notify all appropriate personnel. All instructions given to a supplier at the meeting must be within the scope of the contract. State entity personnel must not impose additional requirements upon the supplier or make changes that are outside the scope of the contract. After the contract kickoff meeting, the Contract Administrator should provide minutes of the meeting detailing the items covered. The minutes should include any areas or points requiring clarification, a list of participants, and any assigned responsibilities for further action and due dates for those actions. Copies of the minutes should be distributed to all participants and must be maintained as part of the state entity's contract file. The minutes should be appropriate to the complexity and value of the contract. In cases where the contents are brief, the minutes can be informal and included in the body of a letter or e-mail.

*Contract Kickoff Meeting Checklist is located at <http://www.pandc.nc.gov/divforms>.*

## 12. Monitoring

### a. Performance

The Contract Administrator is responsible for monitoring the *supplier's performance*. The *supplier's performance* (both satisfactory and non-satisfactory) must be documented. The Contract Administrator should use the Contractor/Supplier Performance Evaluation Report to document performance throughout the contract, if applicable. All performance problems or issues must be documented and should be addressed quickly, before the issues grow.

*Contractor/Supplier Performance Evaluation Report is located at <http://www.pandc.nc.gov/divforms>.*

### b. Monitoring Review Types

There are different types of monitoring available, including but not limited to: site visit, desk review, expenditure document review and monitoring by third parties. Depending on the type and scope of the contract one or more methods, or a combination of various elements, may be used.

#### 1. **Site Visit** (Full and limited scope)

*Full scope* site visits are typically scheduled visits to the contractor's place of business/physical location of service provided. They are based on a risk assessment of the contract and cover a broad range of contract compliance and performance requirements. *Limited scope* site visits typically focus on a particular problem.

#### 2. **Desk Review**

Typically, these are agency reviews of reports submitted by the contractor to the agency. Agencies are to review actual performance against the contract requirements, actual expenditures to the approved budget, and current reporting period to prior periods.

#### 3. **Expenditure Document Review**

These are reviews of contractor invoices and expenditure draw requests to determine if the rates and services are the same as allowed by the contract. Determine if the supporting documents such as cost reports, third party receipts for expenses, detailed client information, etc. adequately support the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting document is insufficient to support the request, then you must report this to the appropriate management level for a decision on the appropriate response and, if then appropriate, begin the dispute resolution process as outlined in this guide.

#### 4. **Monitoring by Third Parties**

In some instances, the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For example, in the case of a construction contract, the task of ensuring progress in accordance with the contract may be performed by the architectural firm that provided the construction plans. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with agency staff.

### **13. Establish Expectations**

Establish expectations so that individuals responsible for contract management and the contractors all understand what will be overseen and the criteria used to evaluate contractor performance.

A part of establishing expectations is determining when status reports for the contract will be due and to whom the reports will be sent. A best practice for larger projects is to have the first monitoring status report about thirty (30) days after the start of the work. This will either help ensure that everything is going well or uncover any issues to be resolved. Additional status reports are to be made by the contract manager throughout the contract period with a frequency based on the risks associated with the contract. For more complex contracts, status reports or meetings might be held every week.

#### **Using Monitoring Review Results**

Monitoring reviews, audits and investigations must be followed up on a routine basis to:

- Ensure corrective actions have been taken
- Identify common problem areas that might require training
- Improve future contracts

Agencies will design a system that includes criteria to be used to evaluate contract performance and defined follow-up actions as needed for each contract. The goal of follow-up is to bring the contractor back into compliance with the contract requirements. Follow-up is essential as the problem will not correct itself simply because it has been identified and included in the monitoring report. Monitoring results should also be used to improve the contract requirements for future contracts. If there are unnecessary restrictions or insufficient restrictions, this is the time to make a note of the recommended changes so future contracts can incorporate the changes.

### **14. Reporting**

Reporting includes both contract administrator reports to management and the contractor's reports to the contract administrator. There are generally two (2) categories of reports: status reports and activity reports. Both types of reporting serve useful functions:

- **Status Reports** – Describe the progress of the work. The content of the status report will be consistent with and track the organizational structure of the statement of work, i.e. phases, segments, deliverables and products. A status report describes what work is complete and what work is pending. The status of work is then compared and contrasted against the contract schedule. Only work that has been verified as completed or accepted is to be categorized as complete. If there are any unresolved issues that the agency is contractually obligated to resolve, those issues are to be included in the status report and a resolution requested. If the scope of work has changed during the contract (by written contract amendment), insist that status reports track the original contract schedule, not a revised contract schedule, unless the amendment provides for a revised contract schedule. If status is tracked against a revised schedule, there is a risk that the schedule will continually change and the status report will be rendered meaningless.

If the contract does not provide for periodic status reports, the agency must ensure that sufficient progress is being made by the contractor. This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.

- Activity Reports – Describe any activity on the project; project activity is not the same as progress. A project may have a great deal of activity without making substantive progress. On the other hand, activity reporting can be a core feature of contract management. For example, a contractor payment in an outsourcing contract may be based on the number of completed transactions. In this example, activity reporting is critical to contract administration.

## **15. Contract Payments**

### **a. Payment Terms**

The costs billed by the contractor must be in accordance with the contract payment terms. Total payments must not exceed the contract limits.

Standard payment terms are Net 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card if accepted by the contractor for payment. If payment is made by procurement card, then payment may be processed immediately by the contractor. Procurement card transaction limits are no more than \$2,500 unless prior approval is obtained from the State Purchasing Officer.

### **b. Availability Of Funds**

Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency. Authorized payments should be consistent with the contract terms, and any deviation requires a contract amendment.

## **16. Payment Approval Process**

NOTE: The contract should specify payment model (e.g. per deliverable, periodic payments, on final acceptance, etc.), payment rate, reimbursement description and amount, if any, and the invoicing process.

The costs billed by the contractor must be in accordance with the contract payment terms and agency payment policy and procedures.

Invoices must be reviewed to ensure that the contractor's billing coincides with the contract's progress. This requires the contractor's progress to be measurable. Invoices submitted, are insufficient indicators of the contractor's progress.

If the agency believes that the requested payment exceeds the contractor's progress, an explanation should be requested from the contractor prior to approval of the invoice. Payment should be withheld pending agency satisfaction with the contractor's progress.

Invoices must be approved prior to payment. The invoice should be reviewed to ensure:

- The contractor is billing only for goods or services received by the agency.
- The goods or services have been accepted.
- Invoices for items requiring a quality acceptance inspection by the Division of Purchase and Contract should not be authorized for payment by the using agency until the item has satisfactorily passed the quality acceptance inspection. Items that require inspection, <http://www.pandc.nc.gov/qcinsp1.htm>.
- The invoice is correct and complies with the terms and conditions of the contract as to identity of the charges and any limits on rates or amounts.
- The total payments do not exceed the contract limits.

Services contracts are unique in that acceptance of a good or service is not necessarily an indicator that an invoice should be paid. Problems with services contracts generally surface after invoices are paid. Contract managers dealing with services contracts should ensure mechanisms exist to incentivize contractors against poor performance when possible and that future payments may be withheld until performance improves.

## 17. Common Types of Payment (Methods)

1. **Installment Payments:** A contract in which the agency's established periodic payments are applied to fulfill the payment obligations for ownership of the commodity. It is used when ownership of commodity at time of possession is intended.
2. **Fixed Price:** Fixed price contracts are generally used when an organization can clearly specify what to buy and that there are no uncertainties anticipated during the performance of the assignment. The total cost of the contract is specified when the contract is awarded and is based on the initial specification of the Scope of Work (SOW). There are no adjustments to price based on the contractor's performance.
3. **Milestone Payments:** Are performed sequentially, and only in the order listed. No work shall be accepted, nor will it be paid for, unless and until all prior events have been successfully completed. Written official notice advising of the successful completion and approval for payment of an event shall establish the completion date for that event and shall constitute permission for the Contractor to begin the next event in the sequence. The Contractor and the Agencies agree that payments to be made for this contract shall be based upon satisfactory completion by the Contractor of the milestones established in the schedule.
4. **Partial Payments:** Payment amount that is less than the total amount due. It may be a partial payment for unfinished work.
5. **Time & Material:** Time and materials contracts provide the contractor with a fixed rate for each hour of labor plus the cost of materials. If no materials are involved, this is referred to as "labor hour". A contract ceiling price or not-to-exceed amount is usually established to control cost. In no event may a cost plus percentage of cost payment method be used, unless the exact amount of the cost component is known and included in the contract.
6. **Percentage of Amount Recovered:** In certain cases, when services to recover funds are involved, payment may be calculated as a percentage of the amount recovered.

## 18. Dispute Resolution

Proper dispute resolution is a core skill of successful contract management. The goal of the resolution process is to resolve all problems before they escalate to the next level. It is essential to identify problems early in the performance period, use effective communication and formalize the process in writing using procedures that increase in formality as the problem persists, or for contracts with fairly simple performance requirements the Vendor Complaint Form can be used. To avoid escalation and assure the state entity has not exacerbated potential problems, it is imperative that state entity personnel respond promptly to all supplier inquiries. The general steps in the dispute resolution process are described below. However, nothing in this section will supersede the terms of the contract with respect to dispute resolution (such as provisions governing escalation process, mediation, etc.).

<b>General Steps Governing Dispute Resolution</b>	
<b>Steps</b>	<b>Description of Step</b>
Identify the Problem	The Contract Administrator should obtain all the information regarding the potential problem from all relevant sources, including the project manager, representative customers and the supplier.
Research Facts	Once the problem is identified, the Contract Administrator must review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the State entity cannot expect the supplier to perform outside the agreement.
Evaluate	The Contract Administrator should review all the facts in conjunction with the requirements and terms and conditions of the contract. The Contract Administrator should then confer with the program manager (and management and budget, if necessary) to determine the appropriate course of action.
Discuss with the Supplier and Written Plan of Action	Identify the problem to the supplier and discuss resolution. Frequently, what may appear to be a problem can be resolved by providing the supplier with information. The resolution (Notice to Cure) shall be in writing.
Meeting Strategy	If a meeting is necessary, the agency should prepare a plan and consider how to conduct the meeting, the desired result, the minimum acceptable result, likely responses, etc.

## **19. Default**

A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications), but holding a vendor in default is a relatively drastic remedy and usually means that attempts to correct the problem has failed. Many contracts require a party to give notice if it considers the other party to be in default. Normally, a vendor would not be held in default until it has had an opportunity to correct a performance problem and some legal input has been given.

If it is determined that a contractor must be held in default, a “Notice of Default and Opportunity to Cure” must be sent to the vendor, describing the unacceptable vendor performance, resolution required action and a deadline within which to perform the required activity. Resolution of performance issues should be worked out with the vendor if at all possible.

*Default and Request to Cure Letter is located at <http://www.pandc.nc.gov/divforms>.*

### **Cure**

When it has been determined that a termination for default is warranted, the Contract Administrator must promptly notify the supplier in writing and specify a deadline to correct or cure the deficiency or violation. The deadline must be a reasonable amount of time to resolve the issue.

Note that holding a vendor in default is not normally a unilateral decision by one person. Typically, various risks and benefits must be evaluated, legal advice obtained, and the proper course of action carefully planned. Usually, this is the final step before terminating a contract, once every other effort to save the contract has been made.

### **Remedies**

In case of default by the contractor, the State may terminate the contract and procure the articles or services from other sources and hold an uncured contractor responsible for any excess cost incurred thereby (such as repurchase or other cost). The contract may require a performance bond or other acceptable alternative guarantees from successful bidder without expense to the State, prior to start of work.

*Termination and Remedies Letter is located at <http://www.pandc.nc.gov/divforms>.*

## 20. Vendor Complaints/Discrepancies

Future sanctions against a vendor (e.g., debarment) can only occur if a written record exists that the vendor was informed of its poor performance. Complaints and/or discrepancies on vendor performance should be reported as they occur using the Vendor Complaint Form. Vendors are required to respond to the agency and send a copy to the State Purchasing Officer. Failure to respond within ten days may result in removal from the Vendors List. These complaint/discrepancy reports are necessary in order to develop vendor history, evaluate vendor performance, and, if required, take appropriate and timely action.

*P&C Vendor Complaint Form is located at <http://www.pandc.nc.gov/divforms>.*

## 21. Contract Closeout

It is the responsibility of each agency to ensure the work performed for the agency under a contract has been completed in a satisfactory manner and the contract is ready for closeout prior to final payment. The contract closeout checklist can serve as a tool to assist the agency during that process. The contract closeout file should contain all necessary documentation at the time of closeout. **Final payment shall never be made until all work is complete and all deliverables are received and accepted.**

The purpose of closeout activities is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract closeout is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

To initiate the closeout process, the agency shall first determine that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for close out when:

- All deliverables, including reports have been delivered, validated and accepted by the agency. Contract managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed.
- All agency furnished equipment and materials has been returned.
- All disputes or corrective actions have been resolved.
- All monitoring issues have been resolved.
- All property inventory and ownership issues are resolved including disposition of any equipment or licenses purchased under the contract.
- Final acceptance from the Project Manager has been received (if applicable).
- Contractor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.
- Final payment has been made.

In practice, many contracts cannot be completely closed out after the date the above items are all completed, because the warranty period is effective well beyond such date and therefore the contractor may not have “satisfactorily performed all required contractual obligations” until the end of the warranty period. Furthermore, sometimes even at that point the contract cannot be fully closed out, because it may, for example, require the contractor to “have repair parts available for years after contract award.” All closeout

activities should be performed as soon as practicable and the file maintained until any long term obligations are complete.

It is recommended that agencies have a closeout process for contracts that allow sufficient time to finalize closeout procedures, including completion of all final obligations and issuance of payments. Good contract management and administrative procedures require that contracts be closed out and filed, not open or unresolved for an extended amount of time beyond the expiration date.

*Contract Validation Checklist is located at <http://www.pandc.nc.gov/divforms>.*

*Contract Closeout Checklist is located at <http://www.pandc.nc.gov/divforms>.*

## Definitions

**Agency:** All departments, institutions, boards, commissions, universities, Purchase & Contract, or other units of the State, and community colleges; unless specifically exempted in this Manual by reference. For the purpose of identifying a special responsibility constituent institution, as designated by the University Board of Governors, just the name “university” shall be used to distinguish any difference in the rules.

**Agency Specific Term Contract:** A term contract for use by a specific agency. Depending on the dollar value of the contract, it may be handled by P&C, OITS, or the agency.

**Commodity:** Any equipment, materials or supplies. Also referred to in this guide as goods and items.

**Convenience Contracts:** Indefinite quantity contracts that are used by the state agencies to purchase goods or services at the agency’s discretion.

**Contract Administration:** Contract administration begins after award of the contract. Its purpose is to assure that the contractor’s and agency’s total performance is in accordance with the terms and conditions of the contractual agreement.

**Contract Administrator:** Monitors progress to verify that services are performed as required and that all deadlines are being met. They may also establish reporting requirements that need to be followed by the participants.

**Fixed Price Contracts:** Fixed price contracts are generally used when an organization can clearly specify what to buy and that there are not uncertainties anticipated during the performance of the assignment. The total cost of the contract is specified when the contract is awarded and is based on the initial specification of the Scope of Work (SOW). There are not adjustments to price based on the contractor’s performance. This type of pricing provides the greatest incentive for cost control because the contractor keeps any savings realized.

**Grant or Sub Grant Contract:** Grant Contracts typically use the informal competitive process through the Request for Application (RFA); whereas, Procurement contracts typically use the formal competitive process such as the Request for Proposal (RFP) or Invitation for Bids (IFB). For reporting purposes, if in substance it creates a Federal Assistance Relationship between parties, One Party (the awarding agency) provides resources to the other (the grantee or sub grantee) for the purpose of carrying out a project or program in accordance with rules set by the awarding agency. Contract types typically include direct/indirect and medical service contracts.

**Installment Purchase:** A contract in which the agencies established periodic payments are applied to fulfill the payment obligations for ownership of the commodity, used when ownership of commodity at time of possession is intended.

**Invitation For Bids (IFB):** A formal solicitation document, usually in a standardized format. Normally used for larger, advertised competitive procurements for commodities.

**Lease:** A contract conveying from one to another the use of a commodity for a designated period of time in return for established periodic payments. Does not contain an option, or an obligation to purchase.

**Lease-Purchase:** A contract conveying from one to another use of a commodity for a designated period of time in return for established periodic payments, with an option or obligation to purchase the commodity. Used when outright ownership is uncertain or when it is the intent to delay ownership.

**Milestone Payments:** Are performed sequentially and only in the order listed. No work shall be accepted, nor will it be paid for, unless and until all prior events have been successfully completed. Written official notice advising of the successful completion and approval for payment of an event shall establish the completion date for that event and shall constitute permission for the Contractor to begin the next event in the sequence. The Contractor and the Agencies agree that payments to be made for this contract shall be based upon satisfactory completion by the Contractor of the milestones established in the schedule.

**Modification:** Often alters one or more substantive terms of the contract. Because substantive changes can cause significant changes to the rights and responsibilities of one or both parties, bilateral execution serves as a protection mechanism so that both parties are fully aware of the nature of the change. Common substantive change usually impact the contract term, work statement (specifications) method of delivery, place of delivery, and cost or terms and conditions. A change clause should be included in all contracts to establish the boundaries of contract modifications that can be made.

**Negotiation:** The act of making a purchase when all offers have been rejected, or when there is justification for waiving the competitive process, or when an emergency or pressing need arises.

**Offer:** This term may refer to a proposal, quote or bid submitted in response to a Request for Proposal, Request for Quotation, Invitation for Bids, or Negotiation.

**Offeror:** Company, firm, corporation, partnership, individual, etc. submitting a response to a solicitation document or in response to a negotiation.

**Open Market Contract:** A contract for the purchase of a commodity or contractual service not covered by a term contract, usually for a definite quantity on a single order. Contracts awarded as a result of a public advertised competitive solicitation.

**Partial Payments:** Payment amount that is less than the due amount, is a part payment for an unfinished work.

**Prompt Payment Discounts:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will be considered in the award of the contract and as a factor to aid in resolving cases of identical prices.

**Purchase:** The solicitation of, and acceptance of, an offer to (1) provide a service (2) lease or rent a commodity, (3) sell a commodity outright, or (4) sell a commodity through a lease purchase or installment purchase contract.

**Purchase Order:** A document issued by a state agency to a provider of products or services, indicating what good/service is ordered, how much is needed, and what it will cost. A PO is a legal offer to buy products and services.

**Rental:** A contract for the right to use a commodity or product for a period of time, usually with payments made at intervals over the period of use and normally providing for short notice of cancellation.

**Request For Proposal (RFP):** A solicitation document. This document, or the IFB, is required to be used for competitive procurements over agency delegation. Normally used for larger, advertised competitive procurements for services. It is an alternate acquisition method to the IFB.

**Request For Quotation (RFQ):** A solicitation document. Normally used for smaller, non-advertised competitive procurements (may include e-quote).

**Solicitation Document:** A written Request for Quotation, Request for Proposal, or an Invitation for Bids.

**Statewide Term Contract:** A term contract handled by P&C for all agencies, unless exempted by statute, rule or special term and condition specific to that contract.

**Time and Materials:** Time and materials contracts provide the contractor with a fixed rate for each hour of labor plus the cost of materials. If no materials are involved, this is referred to as "labor hour". A contract ceiling price or not-to-exceed amount is usually established to control cost. Time and Material pricing is generally used to establish suppliers and prices for a given commodity or a group of commodities, for a period of time without guaranteed quantities being specified.

**Term Contract:** A contract generally intended to cover all normal requirements for a commodity or contractual service for a specified period of time based on estimated quantities only. This may be referred to as an indefinite quantity or requirement contract.

# Appendix



## Appendix A – Contract Monitoring Checklist

It is the responsibility of each agency to ensure all contractual obligations are met and that contract monitoring is documented. This appendix serves as a tool to assist the agency during that process. Each contract is unique and the agency may add to this tool as required to meet its particular circumstance.

Item #	Contract Monitoring	Agency Documentation	Yes/No
1.	<b>Contract:</b> Contract number/ effective date/contractor name/purchase order number.	Contract #: _____ Contract Effective Date: _____ Contractor Name: _____ Contract Renewal Options? Purchase Order #: _____	Yes / No
2.	<b>Agency Contract Administrator:</b> Name/title/contact information of the person responsible for ensuring all contractual obligations are met.	Name: _____ Title: _____ Phone #: _____ E-mail: _____	
3.	<b>Monitoring Procedures/Methodology:</b> Written documented contract monitoring procedures/methodology.	Agency has a written contract monitoring procedures?	Yes/No
4.	<b>Delivery:</b> Delivery date specified in the contract/date of delivery.	Contract specified delivery date: Date agency received item(s): Full or Partial Delivery? Delivery in Accordance with Contract?	Full/Partial Yes/No
5.	<b>Acceptance:</b> Item(s) delivered were in accordance with contract specifications.	Items delivered were accepted (met contract specifications)? Latent material defects?	Yes/No Yes/No
6.	<b>Warranty:</b> Item(s) warranted in accordance with contract.	Warranty work was required? If so, warranty was performed in accordance with the contract?	Yes/No Yes/No
7.	<b>Invoice:</b> Invoice price mirrored purchase order price.	Invoice matched purchase order price? If no, invoiced more or less than PO?	Yes/No More/Less
8.	<b>Default of Contract:</b> Was contractor held in default of contract and/or debarred.	Was the contractor held in default? Was the contractor debarred? Was a vendor complaint form provided to P&C?	Yes/No Yes/No Yes/No
<b>Additional Agency Monitoring Requirements (example)</b>			
9.	<b>Reports:</b> All reports required by the contract were provided timely/accurately/prescribed manner.	Contractor reports were provided by the required due date? Contractor reports were accurate (when initially submitted)? Contractor reports were in the prescribed manner?	Yes/No Yes/No Yes/No

Contract Monitoring performed by (print and sign): \_\_\_\_\_

## Appendix B – Contract Monitoring & Administration Plan

Vendor/Contractor Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

This **Contract Monitoring & Administration Plan** should be used by the agency with each of its contracts. The use of this Checklist helps to ensure proper management of the contract and provides a record that professional management practices were used in the monitoring and administration of the contract.

**Instructions:** Please check “Yes” or “No” for each item listed below, to indicate which practices will be used in managing and monitoring the contract. **This Plan should be signed by the designated contract administrator or project manager to certify that the practices indicated were used to manage and monitor the contract.** The signed Checklist shall be included in the contract file.

CONTRACT MONITORING & ADMINISTRATION TOOL			
BEST PRACTICES:	REFERENCES:	Will this “Practice” be used to manage this contract?	
		YES	NO
<b>Agency Written Procedures</b>			
1. Review the written Procedural Manual for contract monitoring, <i>required by SB1213</i>	<a href="http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S1213v4.pdf">http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S1213v4.pdf</a>		
<b>Contract Maintenance File</b>			
1. Establish and maintain a formal Contract Administration File, including all phases of the contract lifecycle. Maintain records in accordance with the records retention policy	<a href="http://www.pandc.nc.gov/admcode.htm">http://www.pandc.nc.gov/admcode.htm</a>		
2. Review pertinent Federal and State laws, rules and regulations			
<b>Contract Development (Pre-Award or Pre-Contract)</b>			
1. Ensure the contract documents are developed in accordance with appropriate State laws and that terms required by law were included. (i.e.; have a <i>right to audit</i> clause in contract) <i>[Required by SB1213 to be in the solicitation]</i>			
2. Designate a person to be responsible for the day to day monitoring of the contract to ensure deliverables and obligations are met. (i.e. Contract Administrator or Project Manager)			

BEST PRACTICE Cont.	REFERENCES:	Will this "Practice" be used to manage this contract?	
		YES	NO
3. Have a Risk Management Contingency Plan in place to address identified risks			
4. Identify all proposed subcontractors			
<b>Contract Monitoring</b>			
1. Identify and document each contract deliverable, specification, method of evaluation (i.e. report, delivery, and inspection) expected results, timeframe, budget and performance criteria			
2. Maintain information in an accessible database that tracks deliverables (such as: contract management system, spreadsheet, MS Outlook)			
3. Conduct a "kick-off" or post award meeting with the contractor and establish a regular meeting schedule or follow the schedule specified in the contract	<a href="http://www.doa.nc.gov/pandc/Documents/Contract-Administration-and-Monitoring-Guide/ContractKickoffMeetingChecklist.pdf">http://www.doa.nc.gov/pandc/Documents/Contract-Administration-and-Monitoring-Guide/ContractKickoffMeetingChecklist.pdf</a>		
4. Require and utilize Progress Reports from the contractor			
5. Conduct careful monitoring of contractor performance and maintain written records thereof			
6. Have an internal plan for Resolution of Vendor Performance Issues. (Corrective Action Plan, Performance Fees)			
<b>Post Contract Administration</b>			
1. Conduct Post Contract Evaluations and Close-out Procedures	<a href="http://www.doa.nc.gov/pandc/Documents/Contract-Administration-and-Monitoring-Guide/ContractMonitoringChecklist.pdf">http://www.doa.nc.gov/pandc/Documents/Contract-Administration-and-Monitoring-Guide/ContractMonitoringChecklist.pdf</a>		

BEST PRACTICE Cont.	REFERENCES:	Will this "Practice" be used to manage this contract?	
		Yes	No
2. At the end of the contract, ensure that you have received a clearly marked FINAL invoice and progress report. Ensure the final invoice includes a signed certification stating that all expenses were true and accurate and for appropriate purposes in accordance with the contract			

I hereby certify that the above indicated practices were used to manage and monitor the above referenced contract.

Signature of responsible party \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix C – Contract Administrator File Checklist

It is the responsibility of each agency to ensure all contractual obligations are met and contract monitoring is documented. This checklist serves as a tool to assist the agency during that process. *(Include in the contract monitoring folder/binder.)*

**Completed By:** \_\_\_\_\_ **Department:** \_\_\_\_\_

**Contract Number:** \_\_\_\_\_ **Contract Begin/End Date:** \_\_\_\_\_

**Name of Vendor / Contractor:** \_\_\_\_\_

**Contract Manager:** \_\_\_\_\_

Contract Management Activities	YES	NO	N/A
<b>General</b>			
Does the contract file contain a copy of the signed, executed current contract?			
Does the contract file contain the contract term and renewal information? Signed renewals?			
Does the contract file have a copy of all attachments listed in the contract?			
Does the contract file have all amendments, modifications?			
Does the contract file contain contact information and a call log for Contractor's key personnel?			
Does the contract file contain a problem escalation listing for the Contractor?			
Does the contract file clearly state the Contractor's "Legal Notices" address?			
Does the contract file indicate that a copy of the insurance certificate was obtained and is on file?			
Does the contract file contain any necessary licenses, certifications, etc.?			
Does the contract file contain all warranty information?			
Does the contract file contain all specifications, drawings or manuals incorporated into the contract by reference?			
Does the contract file contain a list of contractor submittal requirements?			
Does the contract file contain a list of all information furnished to the contractor?			
Does the contract file contain a list of government furnished property or services?			
Does the contract file contain all general correspondence related to the contract?			
Does the contract file contain originals of all contractor data or report submittals?			
<b>Timeline</b>			
Has a Contract Monitoring timeline been developed for all activities required under the contract? This might include but not limited to: Dates for completing and submitting reports to the Project Manager and/or Administrative Offices.			

<b>Contract Management Activities – Cont.</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
<b>Project Monitoring</b>			
Has a Project monitoring plan been developed, based on contract specifications or other applicable project or programmatic requirements?			
Does the contract file have all notices to proceed, to stop work, to correct deficiencies, or change orders?			
Does the contract file have all letters of approval pertaining to such matters as materials, the contractor’s quality control program, prospective employees, and work schedules?			
Does the contract file have the records/minutes of all meetings, both internal and external? Include sign-in sheets and/or agendas?			
Does the contract file have all monitoring reports, contract manager’s status to supervisor, site visits, desk reviews, and expenditure documentation reviews?			
Does the contract file have all records of complaints and vendor disputes?			
<b>Fiscal Monitoring</b>			
Has a fiscal monitoring plan been developed based on contract specifications or other applicable fiscal requirements? Details would include but not be limited to payment schedules, progress payments made and/or due, or other payment due dates, as required under the contract?			
Has a plan been developed to do periodic monitoring of contract pricing (PO and P-card)?			
Does the contract file have all backup documentation for contractor payment or progress payment and copies of any audits?			
Does the contract file have all contractor invoices, information relative to discount provision for prompt payment, letters pertaining to contract deductions or fee adjustments?			
Ensure the contract authorized total dollar value has not been exceeded			
<b>Corrective Action Plan</b>			
Has a Corrective Action Plan been developed to deal with any contract issues that might arise between the contractor and the Agency? A corrective action plan should include complete contact information for the Agency and the Contractor and establish guidelines agreed to by both parties regarding escalation of issues to the next level of authority, should problems be encountered.			
<b>Reporting</b>			
Have periodic reviews been setup within this contract to discuss spend, customer service, pricing issues, billing and invoicing, etc.			
Does the contract file have all routine reports required by the contract such as sales reports, pricing schedules, approval requests, inspection reports and performance reports			

<b>Contract Management Activities – Cont.</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
<b>Contract Close-out</b>			
Determine that the contractor has satisfactorily performed all required contractual obligations			
Conduct a post contract evaluation and the contract close-out procedures. Ensure process is documented			
<b>List of Stakeholders</b>			
Does the contract file contain the names and contact information for all major stakeholders in this project?			
A “stakeholder” is an individual or department that has had input into the development of the contract, and who would need to be notified at once should there be problems, proposed amendments (including cost or price changes), changes in the scope of work or schedule of deliverables, changes to the agreed upon timeline, decisions to exercise cancellation clause, decision to exercise options to renew and the like.			
Stakeholders would include: <ul style="list-style-type: none"> <li>- Departmental Head</li> <li>- Purchasing Officer</li> <li>- Purchasing or Contract Specialist</li> <li>- Project or Program Manager</li> <li>- Budget Account Manager</li> <li>- Contract Manager</li> <li>- Contract Administrator</li> </ul>			

Signature of Responsible Party \_\_\_\_\_ Date \_\_\_\_\_

## Appendix D – Contract Kickoff Meeting Checklist

<Insert Date and Time>

<Insert Location><Insert Conference Number and Access Code, if applicable>

Topic	
Goal and Objective for the meeting	
Review of Agenda	
Introductions	
Agency Team and their roles (point of contact for Contractor)	
Communication Protocol	
Implementation Timeline <ul style="list-style-type: none"> <li>a. Decisions or obstacles impacting timeline</li> <li>b. Factors to be considered</li> <li>c. Due dates for gathering &amp; definition of requirements (if applicable)</li> <li>d. Impact on other agencies/divisions/units (if applicable)</li> <li>e. Specific Contractor implementation tasks</li> <li>f. Specific Agency implementation tasks</li> </ul>	
Data Flow <ul style="list-style-type: none"> <li>a. System of record for data</li> <li>b. Determine data points and flow for end receipt</li> </ul>	
Functionality and Informatics Considerations: (if applicable) <ul style="list-style-type: none"> <li>a. Telephonic Enrollment</li> <li>b. Web-Portals</li> <li>c. Access to the Agency's offices and equipment</li> </ul>	
Structure and frequency of future meetings <ul style="list-style-type: none"> <li>a. Format</li> <li>b. Duration</li> <li>c. Onsite at Agency or remote</li> </ul>	

<b>Financial and Performance Monitoring Considerations</b>		
a.	Requirement for periodic evaluation reports of contractor performance and/or progress reports be furnished the purchasing office	
b.	That maintenance manuals, parts lists and as-built drawing have been obtained prior to authorization of final payment or as required by contract terms	
c.	A clear understanding of all contractor supplied warranties or bonding commitments	
d.	The need to advise the purchasing office if changes to the contract, follow-up maintenance or other services, etc., may be required	
e.	Acceptance and approval of the receipt of goods and services and documenting the contractor's invoices for approval of payment	
Be sure the user has encumbered funds to pay for services which overlap fiscal years.		
Provide a copy of the contract and any subsequent changes to accounts payable for invoicing/payment action verification.		
Establish and plot critical contract performance milestones required of contractor (e.g., checklist, progress reports or other written deliverables).		
Compile a tracking report on payments made against the contract.		
If the contract is renewed be sure that price and all other requirements are based upon conditions of the basic contract.		
If contractor's performance or delivery is unsatisfactory, issue a Procurement Complaint Form, Cure or Termination letter (as appropriate). Sample letters are included. Should action not yield satisfactory results or assistance is needed, contact your procurement agent.		
If performance and payment bonds are required, be sure copies have been obtained and validity verified by confirming with surety underwriter prior to start of work.		

## Appendix E – Notice of Default and Request to Cure Letter

The following are examples of letters. Revise them as appropriate. For complex dispute situations, contact your attorney advisor.

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### NOTICE OF DEFAULT AND REQUEST TO CURE LETTER

Note: Send only after legal review and proper authorization

(Use Agency Letterhead)

Date

Contractor Name and Address

Re: Contract # \_\_\_\_\_ - Notice of Default and Request to Cure

Dear \_\_\_\_\_:

This letter will provide formal notice that [Contractor] is in default of the above-referenced contract, dated \_\_\_\_\_, for failure to ... [describe nature of performance failure; e.g., make timely delivery, non-conformity with specifications (identify spec.), meet performance standard, etc.], as required in ... [identify paragraph or page of the contract] of the relevant contract.

If you do not fully cure this default within \_\_\_ days after the date of this letter [or specify a date], the [State entity] may exercise its right to terminate the contract for cause, in accordance with paragraph \_\_\_ of the North Carolina General Terms and Conditions [or other applicable term].

Sincerely,

[Name and Title of person signing letter]

## Appendix F – Notice of Termination and Remedies Letter

### NOTICE OF TERMINATION AND REMEDIES LETTER

**Note: Send only after legal review and proper authorization.**

**(Use Agency Letterhead)**

Date

Contractor Name and Address

Re: Contract # \_\_\_\_\_ - Notice of Termination

Dear \_\_\_\_\_:

This letter will provide formal notice of termination of the above-referenced contract between [Contractor] and [State entity], dated \_\_\_\_\_, effective [immediately, or on a specific date]. You were notified of default under this contract by letter. Therefore this contract is terminated for cause, pursuant to its paragraph \_\_\_\_.

You are hereby advised to cease all further performance, immediately. The [State entity] will obtain substitute [goods/services], and, without limitation of any other remedy available under applicable law, [Contractor] is responsible for any additional cost of such [goods/services], as well as any additional costs or damages arising from the default.

Once the additional cost of obtaining substitute [goods/services] is determined, you should be of the amount due. Please note that failure to pay an amount due to the State may result in debarment until such amount is fully paid, as well as in additional collection action.

Sincerely,

[Name and Title of person signing letter]

## Appendix G – Repurchase Cost Letter

**Note: This probably would come from an attorney not a contract administrator.**

**(Use Agency Letterhead)**

Date

Contractor Name and Address

Re: Contract # \_\_\_\_\_ - Repurchase Costs Against (Purchase Order No./Contract No.)

Dear \_\_\_\_\_:

Reference is made to our letter dated \_\_\_\_\_, subject: Notice of Termination for Default. The specified \* (goods), (services) have been repurchased at an additional cost to the State of \$\_\_\_\_\_. Your firm is indebted to the State in the amount of \$\_\_\_\_\_ and is requested to submit a check to this office payable to the\_\_\_\_\_. If the payment is not received within 60 days, we will initiate collection action and proceed with a recommendation of debarment.

Sincerely,

[Name and Title of person signing letter]

\* Choose appropriate condition

## Appendix H – Contract Closeout Checklist

It is the responsibility of each agency to ensure that the work under a contract has been completed and the contract is ready for closeout prior to final payment. This checklist serves as a tool to assist the agency during that process. Each contract is unique and the agency should customize the checklist as required to meet its particular circumstance. The contract file should contain all necessary documentation at the time of closeout. **Absent specific provision in a contract to do so, final payment should never be made until all work is complete and all deliverables are received and accepted.**

Contractor Name	Contract Number	Project Completion Date		
Person Completing Checklist		Project Title/Name		
Task	Yes	No	NA	Date Completed
<b>Administrative Issues</b>				
The contract administration files are consolidated and turned over to Procurement upon completion of the closeout process				
The central file is complete, organized and conforms to regulations governing contract administration as specified by the public agency. [Reference Formal Contract Administration File].				
The Contractor has notified the agency that all work required by the contract is complete				
The Contractor has complied with all contractual terms and conditions				
All file documents have been signed with the original signatures. This includes invoices, vouchers, letters to contractor, memoranda, official correspondence etc.				
All final determinations have been completed				
All optional provisions have expired				
All time extensions have expired				
All change orders and modifications, have been signed, defined and included in the central file.				
Settlement of subcontract by the prime contractor completed				
<b>Monitoring</b>				
All monitoring issues have been resolved				
The monitoring plan updated and documentation of all monitoring requirements accurately reflects the status of all monitoring activities as outlined in the monitoring plan. [Reference Formal Monitoring Plan and Monitoring Checklist].				
The Risk Assessment is updated and completed to reflect the status of all monitoring activity				
All agency specific required approvals have been received.				
The Contractor has complied with all contractual terms and conditions.				
<b>Deliverables</b>				
All Contract deliverables have been received, reviewed, and accepted including all required reports				

## (Appendix H Continued)

Task	Yes	No	NA	Date Completed
<b>Final Property Close Out</b>				
The property inventory report has been received from the contractor				
All Government –owned property, real or person, either furnished by the government or acquired by the contractor for the account of the Government has been accounted for				
All property inventory and ownership issues are resolved including disposition of any equipment, licenses purchased or warranty information under the contract.				
<b>Final Security Close Out (if applicable)</b>				
There has been a Disposition of all Classified Material (Proprietary, Trade Secrets, Sensitive, Confidential, Personal /Privacy) generated to or accessed by the contractor in the performance of the contract.				
<b>Final Patents Closeout (if applicable)</b>				
Final New Technology disclosure report received				
Final invention, patents, and copyright disclosure reports received				
Report affirming that no technology, inventions, patents or copyrights resulted from the contract				
<b>Final Royalty Report Closeout (if applicable)</b>				
Final Royalty Report has been received				
<b>Final Payments and Invoices</b>				
All disallowed payments, performance, deliverables, or suspended costs been resolved.				
All reconciliation has been completed in conjunction with a financial report to verify that all payments have been paid				
Refunds, rebates, and/or credits have been annotated in the file				
The contract file contains a record of all payments made to the contractor.				
All excess funds, such as un-liquidated obligations have been verified and the de-obligations of funds have been accomplished, if required?				
Final invoice has been received, reviewed, accepted and paid.				
<b>Contract Completion Statement</b>				
After final acceptance and final payment has been made, a Contract Completion Statement is prepared and issued officially stating that the contract is complete in its entirety and may be closed and properly archived.				
<b>Vendors Performance Report</b>				
A Vendors Performance Report has been prepared				
<b>Contract Administration Analysis or Post Contract Evaluation</b>				
The contractor and the end-user have completed a contract analysis report card				

## Appendix I – Contract Validation Checklist

It is responsibility of each agency to verify that the work under a contract has been completed and the contract is ready for closeout prior to final payment. This checklist can serve as a tool to assist the agency during that process. Each contract is unique and the agency should customize the checklist as required to meet its particular circumstance. The contract file should contain all necessary documentation at the time of closeout. **Absent specific provision in a contract to do so, final payment should never be made until all work is completed in a satisfactory manner and all deliverables are received and accepted.**

Contractor Name	Contract Number	Project Completion Date
<b>Task</b>		<b>Date Completed</b>
The Contractor has notified the agency that all work required by the contract is complete		
The agency has reviewed and validated that all contract deliverables including all required reports are in accordance with the contract terms and conditions		
The Contractor has complied with all contractual terms and conditions		
The contract file contains all contract addenda or contract change documentation		
The contract file contains a record of all payments made to the contractor		
All property, inventory and ownership issues are resolved including disposition of any equipment, licenses purchased, or warranty information under the contract		
All monitoring issues have been resolved		
All agency specific required approvals have been received		
Final invoice has been received and paid		

**Other Contract/Agency Specific Tasks**

Signature \_\_\_\_\_

Title \_\_\_\_\_

## Appendix J – Contractor/Supplier Performance Evaluation Report

Contract Number: \_\_\_\_\_

Contractor/Supplier: \_\_\_\_\_

Evaluator/Administrator: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Period of Evaluation: From: \_\_\_\_\_ To \_\_\_\_\_

**BASED ON THE FOLLOWING SCALE, RATE THE CONTRACTOR/SUPPLIER’S PERFORMANCE BY CIRCLING YOUR RESPONSE TO THE STATEMENTS BELOW:**

1	2	3	N/A
Did Not Meet Expectations	Met Expectations	Exceeded Expectations	Not Applicable

Goods/Services were delivered in a timely manner	1	2	3	N/A
Goods/Services were of good quality	1	2	3	N/A
Business transactions with contractor/supplier were easy	1	2	3	N/A
Customer support from contractor/supplier was acceptable	1	2	3	N/A
Contractor/Supplier responded to questions/concerns quickly	1	2	3	N/A
Contractor/Supplier’s resolution of issues was appropriate	1	2	3	N/A
Professionalism of contractor/supplier staff was courteous	1	2	3	N/A
Estimate of goods/services was accurate to final contract expense	1	2	3	N/A

**PLEASE ANSWER THE FOLLOWING QUESTIONS BY CIRCLING “YES” OR “NO”**

Overall, did the contractor/supplier meet expectations?	YES	NO
Would you recommend this contractor/supplier in the future?	YES	NO

ADDITIONAL COMMENTS:

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*Thank you for providing us with valuable feedback regarding this contractor/supplier!  
Please include this evaluation in the contract file and forward a copy to the SPO’s office.*

## Appendix K – Contract Monitoring Forms and Templates

The below forms are located at <http://www.pandc.nc.gov/divforms>.

- Contract Monitoring Checklist
- Contract Monitoring & Administration Plan
- Contract Administrator File Checklist
- Contract Kickoff Meeting Checklist
- Default and Request to Cure Letter
- Notice of Termination and Remedies Letter
- Repurchase Cost Letter
- Contract Closeout Checklist
- Contract Validation Checklist
- Contractor/Supplier Performance Evaluation Report
- P&C Vendor Complaint Form

### Additional Links

Purchase & Contract Administrative Code, <http://www.pandc.nc.gov/admcode.htm>

Quality Acceptance Inspection, <http://www.pandc.nc.gov/qcinsp1.htm>