



## *City of Fitchburg, Massachusetts*

Purchasing Department  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

### **Contract Compliance and Performance Procedures**

These procedures govern the oversight of contracts under the control of the associated Department and/or Division Head (hereinafter called "Contract Compliance Officer.")

The information following this policy may be helpful to those administering contracts and performing contract evaluations.

1. The Contract Compliance Officer must keep their copy of the contract, correspondence related to the contract, certified payroll and wage sheets (where applicable), and payment history, on file until the final payment has been made.
2. The Contract Compliance Officer must forward all certified payroll and wage sheets that have been submitted in relation to a closed contract, to the Purchasing Department, once final payment has been made.
3. The Contract Compliance Officer must provide a signed, written record of performance to the Purchasing Department to be kept with the official contract file, on the form provided by the Purchasing Department. The record of performance (COF Performance Evaluation Form) will be completed and submitted within thirty (30) days of contract completion or final payment, whichever is later.
4. The Contract Compliance Officer must comply with all reporting procedures with respect to contracts requiring a DCAMM evaluation, and must provide a copy of the DCAMM evaluation to the Purchasing Department. For construction with a cost exceeding \$1.5 million, the Owner's Project Manager (OPM) is required to complete the form. The DCAMM form is located using the link below.

<https://www.mass.gov/files/documents/2017/10/23/Public%20Evaluation%20Fillable%20Form%202016.pdf>

## **Contract Performance Monitoring – Best Practices**

The Procurement Office uses the a performance record to gather feedback about goods and services received and contractor performance for a number of reasons, especially for determining responsibility of the contractor to be assigned future work or projects.

Documenting and maintaining a contract file are good practices to ensure the delivery is in line with the contract requirements and issues are addressed timely.

Your contract file should contain the following:

- Copy of the contract, including all attachments and amendments
- Award letter
- Notice to proceed
- Copies of all correspondence with the contractor
- Notes from meetings
- Documentation of performance issues/complaints/cure letters
- Contract amendments
- Documentation of deliverables
- Weekly Certified Payroll and Statement of Compliance Forms
- Payment records
- Contract closeout documentation

Regular communications with the contractor should identify problems in real-time. Dispute resolution is preferable to seeking legal remedies; therefore every effort should be made to identify and address problems as they occur, and in writing. Managing performance documents is especially important where there are disputes, to assess liquidated or actual damages, and in justifying termination for default.

Poor or non-performance should never be accepted. That is why documenting problems is critical when requesting a cure. Acceptable means to resolve disputes include:

- Informal dispute resolution through collaboration and negotiation
- Alternative Dispute Resolution
- Liquidated damages
- Contract Termination/Cancellation
- Termination without Cause - mutual consent of both parties.
- Termination for Convenience - contract no longer serves the best interest of the city.
- Termination for Cause - failure to perform, failure to deliver on time, or failure to comply with other terms and conditions, failure to remedy deficiencies identified.

Alternatives to termination for default that can be considered include: withholding payment until performance requirements are met, seeking an alternative source of supply, revising the contract or delivery schedule, or re-procuring the product or service.

## End of Contract/Contract Closeout – Best Practices

Documenting the life of the contract, including the history of the contract from the planning stage to contract completion, consistently reviewing contractor performance, and promptly evaluating challenges and successes are key to wrapping up a project. The COF Evaluation Form will be a helpful tool to use during the final review of the contract to ensure that all the necessary steps in the closeout process are completed.

Additional contract review activities you should conduct:

- Confirm that all contractual obligations have been completed
- Verify if the contract (including all optional renewals) expired
- Confirm that all testing reports or inspections have been completed and accepted
- Confirm that any City property and/or information has been returned
- Confirm that no claims, issues, or unresolved matters exist on the contract
- Confirm that all contractor invoices have been submitted and paid
- Determine if a termination was completed (if it was initiated)
- Verify that the contract file is complete
- Complete and submit COF Evaluation Form to Purchasing
- Provide Certified Payroll and Statement of Compliance Forms to Purchasing Department to complete the contract file.

If the project or job you have completed is something that may be done again in the future, there are some additional things to consider:

- Conduct a contract administrative analysis and document lessons learned, what has worked well and what activities failed.
- Provide a report, including conclusions and recommendations from the contract administrative perspective to others to prevent future issues with similar contracts.



In conclusion, effective contract management results in:

- Higher contract user satisfaction;
- Very limited or no changes to the contract;
- Fewer claims and/or disputes;
- Less chance of increased costs, therefore saving taxpayers' dollars;
- A historical file that contains the essential record of contract award and performance, whether it be used for audit purposes or for basing future decisions; and
- No contract ambiguities, fraud or conflict of interest issues.