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CHAPTER 23. Contract Management and Administration

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23.1 Policy

Contracts for goods and services including construction must be managed and administered to ensure that they are delivered on time, at projected cost, and meet all performance requirements. Contract management and administration is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing to any changes that may arise during contract implementation or execution

23.2 Authority and Responsibilities

Only Contracting Officers acting within the scope of their delegation authority may:

1. Award, modify, extend, terminate, and close-out contracts;
2. Exercise contract options; and
3. Settle contract claims and disputes.

Contracting Officer Representatives (COR) acting within the scope of their delegated authority may perform the following functions as they relate to construction contracts:

1. Negotiate adjustments of contract price above the level of their delegation and/or time with a contractor and recommend acceptance or rejection of negotiation results;
2. Prepare Authority estimates of contract modifications;
3. Modify the contract in accordance with the CHANGES clause within the limits of their delegation;
4. Issue orders for goods or services under the provisions of a blanket purchase agreement; a basic ordering agreement, or other contract type that provides for the placement of orders under the contract terms;
5. Perform other duties that the Chief Contracting Officer, or the Contracting Officer may assign because of special situations; and
6. Perform duties normally assigned to a COTR.

Contracting Officer's Technical Representatives (COTR) may provide such management oversight and technical direction for a particular procurement or contract as specified in writing from the Contracting Officer. A COTR may perform functions such as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Authority-furnished property, reviewing and approving and/or recommending to the Contracting Officer approval/disapproval of vouchers/invoices, etc.

Contracting Officers, CORs, COTRs, and cognizant department personnel are responsible for monitoring contractor performance and ensuring contractor compliance with contractual commitments and obligations.

23.3 Approval of Award Actions

Contracting Officers acting within the scope of their delegation authority may approve award actions.

Except for emergency procurements, no award action may be approved until all required reviews, clearances, determinations, justifications, and other applicable procedures have been completed, and Board of Director's approval has been obtained, where applicable.

23.4 Pre-Award Orientation

A Pre-Award Orientation may be used for construction contracts, complex contracts, or for contracts where there are outstanding issues which need to be discussed and/or resolved prior to contract award. The Contracting Officer in coordination with the COTR will determine whether to hold such a conference, identify who should attend, set the agenda, and make the necessary arrangements.

23.5 Post-Award (Pre-Construction) Conference with Contractor

A Post-Award Conference may be conducted for construction contracts or complex contracts before the work under contract begins. Such a meeting provides key members of both organizations (Authority and the contractor) an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may also cover specific projects plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of equal employment regulations, civil rights requirements, applicable labor laws as described in Section 23.28.6, and other pertinent features of the contract will promote better relations and usually improve contract performance.

A summary report of the post-award conference will be prepared with all information and guidance provided to the contractor, all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.

23.6 Post-Award Conference with Subcontractor

The prime contractor is normally responsible for conducting post-award conferences with subcontractors. The prime contractor may invite Authority representatives to a conference with subcontractors or the Authority may request that the prime contractor initiate a conference with subcontractors.

The Authority lacks privity of contract with subcontractors and shall not take any action that is inconsistent with or alters the subcontracts.

23.7 Contract Execution by the Authority

Only a Contracting Officer is authorized to sign and enter into a contract on behalf of the Authority. The Contracting Officer's name and official title shall be typed, stamped, or printed on the contract. The Contracting Officer shall generally sign the contract after it has been signed by the contractor and shall ensure that the person signing for the contractor has authority to bind the contractor.

23.8 Contract Execution by Contractor

Only an individual or individuals with the authority to bind the contractor shall sign a contract with the Authority on behalf of the contractor. The Contracting Officer may request satisfactory evidence of the signer's authority to bind the contractor.

23.9 Contract Distribution

Copies of contracts or modifications shall be distributed within 10 days after execution by all parties. Copies shall be distributed simultaneously to the contractor, requiring department, and budget office.

23.10 Contract Files

The Authority shall establish and maintain files containing the records of all contractual actions. The documentation in the files shall be sufficient to constitute a complete history of the procurement. Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined. Contents of contract files that contain contractor bid or proposal information or source selection information must be protected from disclosure to unauthorized persons.

The COTR shall maintain separate contract files as specified by the Contracting Officer.

23.11 Changes to Contract

Contracts shall contain a clause that will give the Contracting Officer the right to make any change in the work, within the general scope of the contract, by a written order designated as a change order.

Changes resulting from direction from Authority representatives believed to be a requirement of the contract based on erroneous interpretation of the contract documents, constitute a constructive change, and require a determination of merit by the Contracting Officer in order for the directive to constitute a change order.

Claims or disputes that are subsequently recognized as meritorious may be processed as changes, based on a determination of merit issued by the Contracting Officer.

Changes that are outside the general scope of the contract will require a justification as to the reason the change should be issued to an existing contract, rather than procuring the requirement on competitive basis. The Contracting Officer does not have the contractual authority to issue such changes unilaterally, and must obtain agreement from the contractor prior to issuance. Such changes are issued as supplemental agreements to the contract.

The procurement record will include the reason and necessity for the change.

The equitable adjustment for directed changes, supplemental agreements and value engineering changes will be determined by cost analysis based on an independent Authority Estimate, and a reconciliation of the differences between the contractor's and the authority's figures of the individual work elements.

The equitable adjustment for meritorious claims for work performed will be based on the contractor's incurred costs, adjusted as appropriate for reasonableness and allowability.

If there is no agreement between the Authority and the contractor on the equitable adjustment, the Contracting Officer may determine the equitable adjustment based on the Authority's estimate, and implement the change by a unilateral contract modification. A quantum dispute will be processed as a claim.

23.12 Contract Modifications

Contract modifications are issued to provide the equitable adjustment as a result of changes issued under the contract under the "changes" clause, including supplement agreements, or other clauses. The equitable adjustment may also be provided in a single step by the change order.

Contract modifications require concurrence of the equitable adjustment and acceptance by the Contracting Officer in order for the action to be finalized.

A contract modification executed by both parties cannot be reopened for adjustment unless the Contracting Officer determines the existence of a mutual mistake. Such mistakes are addressed by a separate contract modification which must refer to the modification that requires adjustment or remedy.

If the contractor does not agree with the price or time adjustment, and declines to sign the contract modification, the Contracting Officer may execute the modification on a unilateral basis. Unilateral contract modifications become claims at this point, and they are processed according the procedures for claims and disputes.

Contract modifications stemming from directed changes may be issued in two parts, if work must commence immediately, but the full or detailed scope cannot be defined at the outset.

Contract modifications are also issued to implement direction, or changes involving other clauses, such as:

1. Differing site conditions;
2. Value engineering proposals;
3. Weather delays or strikes;
4. Suspension of work;
5. Termination for convenience;
6. Termination for default; or
7. To incorporate a Letter Contract into a definitive contract.

The above actions may also be implemented by the issuance of a "change order." The procurement record for contract modifications will include as a minimum:

1. Description of the changed statement of work or specification;
2. Contractor proposal;
3. Independent authority estimate;
4. Record of negotiations; and
5. Executed contract modification.

23.13 Novation and Change of Name Agreements

A novation agreement recognizes a successor in interest to an Authority contract when contractor assets are transferred. The novation agreement is executed by the contractor (transferor), the successor in interest (transferee), and the Authority, and by which the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Authority recognizes the transfer of the contract.

A change-of-name recognizes a change in the contractor's name. A change-of-name agreement is executed by the contractor and the Authority, and recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

23.14 Suspension of Work for Noncompliance

The Authority may suspend the work, partially or completely when the contractor's performance is not satisfactory or for the contractor's failure to comply with a material requirement of the contract, such as providing proof of insurance. The contractor shall not be allowed to resume work until the condition giving rise to the suspension of work has been remedied.

The Contracting Officer, or the Contracting Officer's representative where applicable, shall notify the contractor in writing of the suspension or stoppage of work, stating the reasons for the suspension or stoppage, the corrective action required by the contractor, and a date by which the corrective action must be accomplished. Consideration should be given to stating that the contract will be terminated for default unless the corrective action is accomplished or the time allowed for the corrective action is extended.

If the contractor does not complete the required corrective action by the specified date, the Contracting Officer may extend the suspension, or terminate the contract.

The Authority shall not be liable for any costs incurred by the contractor as a result of the suspension or stoppage of work caused by the contractor's unsatisfactory performance or failure to comply with a material requirement of the contract.

23.14.1 Suspension of Work for the Convenience of the Authority

The Authority may, when in its interest, order a partial or complete suspension of work, or a work stoppage. The Contracting Officer shall notify the contractor in writing of the suspension or stoppage of work.

The notice shall include:

1. A description of the work to be suspended;
2. The period of the suspension or stoppage of work;
3. Instructions concerning the contractor's issuance of further orders for materials or services;
4. Guidance to the contractor on action to be taken on any subcontracts; and
5. Other suggestions to the contractor for minimizing costs

Prior to the expiration of the suspension, the Contracting Officer shall take appropriate action to:

1. Rescind the suspension/stop-work order;
2. Extend the period of suspension/ stop-work order; or
3. Terminate the contract for the convenience of the Authority

If a suspension/stop-work order is rescinded, or the period of the order or any extension thereof expires, and if the order or extension does not contain an automatic termination for convenience, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and modify the contract in writing.

If the contract is terminated, the Contracting Officer shall allow reasonable costs resulting from the stop-work order.

23.15 Termination for Default

The Authority may terminate a contract, in whole or in part for default, if it is determined that the contractor has failed to meet the terms and conditions of the contract or the anticipated failure of the contractor to perform its contractual obligations.

Conditions that may be grounds for termination for default are:

1. Contractor failure to make delivery of the goods or to perform the services within the time specified in the contract;
2. Contractor failure to perform or unsatisfactory performance of any other term or condition of the contract; or
3. Contractor failure to make progress so as to endanger performance of the contract.

The contracts will be terminated in accordance with the Termination for Default clause in the contract. Contracts terminated for default may be completed by the Authority using its own workforce or by contract. In either case, the terminated contractor shall be liable for any additional costs incurred by the Authority to complete the work. If a performance bond applies, the surety will be responsible for the completion.

23.16 Termination for Convenience

The Authority may terminate a contract, in whole or in part for convenience when it is in the best interest of the Authority. When the price of the undelivered balance of the contract is very small, the contract may be permitted to run to completion.

When termination for convenience is considered appropriate, a notice of termination shall be sent to the contractor specifying:

1. That the contract is being terminated for the convenience of the Authority;
2. The effective date of termination;
3. The extent of termination; and
4. Any special instructions.

Any work not terminated will continue. Contracts will be terminated for convenience in accordance with the Termination for Convenience clause in the contract.

23.17 Consent to Subcontract

The Authority may require consent to subcontract if the Authority determines that an individual consent action is required to protect the Authority because of the subcontract type, complexity, value, or because the subcontract

needs special surveillance (e.g. subcontracts for critical systems, subsystems, components, or services).

The Contracting Officer shall ensure that any requirements for consent to subcontract are included in the contract.

23.18 Authority-Furnished Property

Contractors are ordinarily required to furnish all property necessary to perform Authority contracts. The Authority may furnish property to its contractors when it is its best interest.

When the Authority furnishes property under a contract or the contractor acquires property and the Authority reimburses the contractor (e.g. cost-reimbursement contract) for the property, the Contracting Officer shall include a provision in solicitations and contracts that provides for control and accountability of Authority property.

23.19 Negotiation Meetings

All negotiation meetings should be conducted at Authority facilities. The Contracting Officer, or the Contracting Officer's Representative where applicable, may approve exceptions on a case-by-case basis.

23.20 Delivery and Performance

The Authority shall clearly state delivery or performance requirements in each solicitation and contract. The Contracting Officer shall ensure that delivery or performance requirements are realistic and meet the requirements of the procurement.

The Authority may establish different delivery or performance requirements for separable items of work. When establishing delivery or performance requirements, the Contracting Officer shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract award or acceptance by the Authority, or the time for receipt by the contractor of an executed contract.

The Contracting Officer is responsible to ensure that goods, services, or construction procured under each Authority contract conform to the quality, safety and quantity requirements of the contract. The Contracting Officer shall be notified immediately of any delivery or performance issues.

23.21 Acceptance and Rejection of Goods and Services

Each Authority contract shall include appropriate inspection and test and other quality requirements, including warranty and reliability clauses necessary to protect the Authority's interests. Goods and services procured by the Authority shall be inspected to ensure the goods are delivered or the services are performed as specified.

The ordering department is responsible for notifying the Contracting Officer when goods delivered or services performed comply, or fail to comply, with the terms and conditions of the contract.

The Contracting Officer is responsible for acceptance or rejection of goods delivered or services performed. The Contracting Officer shall notify the contractor of the rejection of goods or services and may require the contractor to correct the deficiencies or take other action as authorized by the appropriate contract clause. Any costs incurred by the contractor to correct the deficiencies, including any re-inspection costs shall be borne solely by the contractor. Any shipping costs incurred by the Authority to return rejected goods to the contractor shall be chargeable to the contractor.

23.22 Acceptance and Rejection of Construction (RESERVED)

23.23 Additional Contract Compliance Responsibilities

Authority contracts shall not preclude the Authority from performing inspection, test, or other pertinent quality assurance measures.

Contract quality assurance shall be conducted before acceptance by or under the direction of Authority personnel. The Authority department responsible for the technical requirements shall provide any quality plan

specifications necessary for inspection, testing, and other contract quality requirements.

The necessary requirements for the contractor's control of quality for the goods, services, or construction shall be included in Authority solicitations and contracts.

23.24 Liquidated Damages

Liquidated damages shall be included in all construction contracts exceeding \$100,000. Liquidated damages may also be included in other than construction contracts when the time of delivery or performance is such an important factor in the award of the contract that the Authority may reasonably expect to suffer damages if the project is delayed.

The Contracting Officer shall determine a rate of liquidated damages for each contract that will approximate the amount of the damages that the Authority will incur as a result of the delay.

The Authority contracts may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages. The Contracting Officer may use more than one liquidated damages rate when necessary and appropriate.

The Contracting Officer must take all reasonable steps to mitigate liquidated damages, including cure notices when progress is not maintained, and there is probability for late completion.

23.25 Contract Funding and Fiscal Year

Before executing any contract, the Contracting Officer shall obtain certification that funds are available in the amount and for the purpose of the contract.

The Contracting Officer shall include in a contract that is based on the availability of funds a provision expressly stating that the portion of the contract requiring payment of any amount in excess of available funding is conditioned upon the appropriation or allocation of additional budget authority.

The Contracting Officer shall include in a contract that is based on future fiscal year funding a provision stating that the portion of the contract requiring expenditures in a future fiscal year is conditioned upon the appropriation of budget authority for that fiscal year.

A contractor shall not perform services or deliver goods under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

The Authority shall not accept goods, services, or construction services under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

23.26 Limitation of Cost or Funds

The Contracting Officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, shall promptly obtain programming information pertinent to the contract's continuation.

The Contracting Officer shall notify the contractor in writing that:

1. The contract is to be continued and additional funds have been allotted or that the estimated cost has been increased, in a specified amount; or
2. The contract is not to be continued and the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract; or
3. The contract is to be terminated.

23.27 Invoicing and Payment

Authority contracts shall include invoicing and payment instructions. The Authority shall promptly pay contractors

for goods, services, and construction that are delivered and accepted, meet contract quality requirements, and are properly invoiced. Payment for goods is normally made after delivery and acceptance. Payment for services is normally made based on established milestones or monthly for services rendered. Payment for construction is normally made by progress payments.

23.27.1 Advance Payments

The Authority shall not make advance payments on any contract, except for contracts for the payment of rents, tuition, insurance premiums, and subscriptions to publications

23.27.2 Progress Payments for Construction Contracts (Reserved)

23.27.3 Progress Payments for Other than Construction Contracts

The Contracting Officer shall include a clause in each solicitation that will describe the method of determining payments under the contract.

The clause may include one of the following methods, or other methods that are determined appropriate:

1. Payment based on the contractual value of the deliverable, upon delivery, inspection and acceptance;
2. Payment based on milestone achievements as established in the contract; or
3. Payment based on progress based on an assessment by the Authority as to the status of the contract. Progress payment cycles normally cover one month, but cycles with shorter periods may be specified when appropriate.

23.27.4 Progress Payments to Subcontractors

The Contracting Officer shall include provisions in each contract providing for progress payments requiring the contractor to include in the terms of each subcontract, the substance of the progress payment provisions in the prime contract. The subcontract payment provision should be modified to indicate that the contractor awards the subcontract and administers the progress payments.

23.27.5 Risk of Loss

The Contracting Officer shall include provisions in each contract providing for progress payments that, except for normal spoilage, the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless the Authority has expressly assumed that risk.

23.27.6 Protection of Authority Title

The Contracting Officer shall include provisions in each contract that would give the Authority title to all of the materials, work-in-progress, finished goods, intellectual property, and other items for which payments have been made under the contract.

23.27.7 Setoff and Withholding of Payments

The Authority may setoff or withhold payments due a contractor to settle a contract debt. Prior to using a setoff or withholding payments, the Contracting Officer, or other designated official, shall use all reasonable means available, short of litigation, to collect the debts.

23.27.8 Assignment of Contract Payments by Contractor

A contractor may assign moneys due or to become due under a contract if the contract does not prohibit the assignment.

Any assignment not prohibited by the contract shall be made to a bank, trust company, or other financing institution, including any Federal lending agency and shall not be further assigned, except for any assignment made to one party as agent or trustee for two or more parties participating in the financing of the contract.

23.27.9 Final Payments

Final payments are made only after completion and acceptance of all goods, services or construction required under the contract, presentation of a properly executed voucher, and presentation of release of all claims against

the Authority arising under the contract.

23.28 Contract Closeout

Authority contracts will be closed out when they are both physically and administratively complete and all aspects of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. Authority contracts are physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Authority, including those articles, have been delivered to and accepted by the Authority, including those articles and services for which no specific compensation may have been stipulated. Authority contracts are administratively complete when all payments have been made and administrative actions accomplished. This includes a determination by the Contracting Officer that the Authority has recovered the cost incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) determined by the Authority to have occurred during the course of and in connection with the contract.

The Contracting Officer is responsible for review of the contract file and obtaining all necessary documentation to ensure:

1. All deliverables and/or services (including any reports) required under the contract have been received and accepted;
2. The terms and conditions of the contract have been complied with;
3. The disposition of accountable property under the contract has been accomplished;
4. A final audit, when appropriate, has been performed and all questioned costs have been resolved;
5. The surety for the payment bond, if any, has consented to releasing final payment to the contractor;
6. All costs incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations determined by the Authority to have occurred during the course of and in connection with the contract (and any related subcontracts) shall be paid by the contractor. "Labor Violation" is hereby defined as any violation of an applicable labor law including but not limited to any violation of the National Labor Relations Act, prevailing wage laws, wage and hour laws, anti-discrimination laws, and occupational safety and health laws. Such "Labor Violation" shall also include retaliation against an employee for exercising or attempting to exercise any right or interest under law arising from, in connection with, or related to a contract covered herein or intimidation of an employee to prevent the exercise of such right or interest; and
7. All necessary actions required to close the contract are completed and documented.

Small purchase files shall be considered closed when the Contracting Officer receives evidence of receipt of goods or services and final payment.

23.29 Quick Close of Cost Reimbursement Contracts

Cost reimbursement contracts may be closed out in advance of the determination of final indirect cost rates if the contract is physically complete and the amount of unsettled indirect cost to be allocated to the contract is relatively insignificant.

Indirect cost amounts will be considered insignificant when the total unsettled indirect cost to be allocated to any one contract does not exceed \$1,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year.

The Contracting Officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information and agreement can be reached on a reasonable estimate of allocable dollars.

Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

23.30 Evaluation of Contractors

The Authority shall evaluate all contractors providing goods and services including construction in excess of \$100,000. Contractor evaluation occurs during and after contract performance and shall be used in evaluating contractor past performance during future solicitations.