

**Montgomery County, Maryland**  
**Office of the County Executive**  
**Office of Internal Audit**



**Contractor Compliance Monitoring: Compliance Review**

**December 30, 2019**

# Highlights

## Why MCIA Did this Review

The Montgomery County Office of Internal Audit (MCIA) conducted a review of selected County departments' contractor compliance monitoring processes applicable to procurement-exempt Agreements, or Agreements that are not subject to Chapter 11B of the County Code (Agreements). In FY2018, these types of Agreements accounted for approximately \$113 million in County spending.

The overall focus of this review was to assess County-wide performance and compliance monitoring processes applicable to procurement-exempt Agreements to ensure terms and conditions set forth in Agreements such as grants, leases, contracts, etc. are compliant with expected deliverables from the vendor and fees the County incurs. The review was conducted by the accounting firm SC&H Group, Inc., under contract with MCIA.

MCIA is making three recommendations to strengthen County monitoring of vendor compliance with procurement-exempt Agreements.

**December 2019**

## Contractor Compliance Monitoring: Compliance Review

### What MCIA Found

The County has taken a number of steps to strengthen internal controls and processes governing procurement-exempt Agreements. In September 2011, the County issued a new interim Administrative Procedure (AP 2-4)<sup>1</sup> *Agreements between Montgomery County Government and Other Organizations*, establishing policies and procedures for preparation, review, clearance, and approval of such Agreements. The County's Accounts Payable Section has published guidance for departments to utilize when reviewing and approving procurement-exempt invoices. However, there is no centralized office responsible for providing oversight or standardized guidance and tools (e.g. checklists, report templates, etc.) for departments to use when monitoring compliance with the terms and obligations of procurement-exempt Agreements. Each department is responsible for developing and implementing compliance monitoring procedures and requirements specific to their respective Agreements. While, no improper or non-compliant payments were identified in the documentation included in this review, we found an overall lack of formally documented procedures and the specific activities performed vary by department and by Agreement.

There are opportunities for the County to strengthen its management and oversight of procurement-exempt Agreements. We identified three findings related to current monitoring procedures:

1. County-level oversight of procurement-exempt Agreement monitoring
2. Standardized guidance for monitoring of procurement-exempt Agreements
3. Defined training requirements and qualifications for contract administrators

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<sup>1</sup> Subsequently issued in final on August 14, 2019.

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## Executive Summary

This report summarizes the results of the contractor compliance monitoring review (“review”) performed by SC&H Group, Inc. (SC&H), under contract with the Montgomery County Office of Internal Audit (MCIA). The review focused on evaluating contractor monitoring processes related to procurement-exempt Agreements (Agreements). The objectives were to:

1. Assess County performance and compliance monitoring processes applicable to Agreements.
2. Assess whether the Agreements contain clearly stated and measurable performance requirements.

County contracts are classified into two types, Chapter 11B (Montgomery County Code) Procurement Contracts (“Procurement Contracts”) and procurement-exempt Agreements (“Agreements”):

1. Procurement Contracts: The Office of Procurement (Procurement) works with departments to identify and document the specific requirements that need to be met, to identify and evaluate potential vendors, and to execute a Procurement Contract with the selected vendor.
2. Agreements: Certain Agreements that are deemed exempt from, or not subject to, the County’s procurement regulations are sourced by the using departments using a Memorandum of Understanding or a Memorandum of Agreement (MOU/MOA) executed between the County and the vendor or other participating entity.

When the County enters into a procurement-exempt Agreement, the using department designates a contract administrator that is primarily responsible for monitoring compliance with the terms and obligations of the Agreement. The contract administrator is responsible for ensuring the work is performed, all deliverables are provided, and County funds are disbursed in accordance with terms of the Agreement.

The expectations and responsibilities of the departments monitoring the procurement-exempt Agreement(s) are not standardized or formalized, as there is no County-wide guidance related to monitoring the terms and requirements of these procurement-exempt Agreements, with the limited exception of Accounts Payable policies that outline the supporting documentation and appropriate evidence of review and approval that must be submitted with invoices when processing payments related to procurement-exempt Agreements, and the requirements set forth in the final AP 2-4, *Agreements between Montgomery County Government and Other Organizations*, and the associated *AP 2-4 General Conditions*. [NOTE: The final AP 2-4 was published on August 14, 2019, subsequent to the completion of the fieldwork phase of this review.]

The review was conducted from June 2019 to August 2019 and focused on department and Agreement-level compliance monitoring processes specific to procurement-exempt Agreements. The review included procedures to document and assess Agreement-related performance and compliance monitoring policies, processes, and practices. The results were evaluated to identify risks that appear to exist across multiple departments and may represent County-wide risks that should be considered and addressed.

The following five departments were included in the review based on their respective procurement-exempt spending in FY18:

1. Department of Environmental Protection (DEP)
2. Department of General Services (DGS)
3. Department of Housing and Community Affairs (DHCA)
4. Department of Transportation (DOT)
5. Montgomery County Police Department (MCPD)

Based on the results of the procedures performed, SC&H identified the following three findings, which are discussed in more detail in the Findings and Recommendations section of this report:

1. The County lacks a centralized office responsible for oversight of procurement-exempt Agreement monitoring. The decentralized nature of monitoring compliance with Agreements results in a lack of consistency across departments in the formalization and documentation of monitoring procedures and with the specific monitoring activities performed by each department. SC&H recommends that the County designate an entity or group with the responsibility to provide oversight of department-level contractor compliance monitoring of all procurement-exempt Agreements to ensure that monitoring is consistent across the County.
2. The County lacks a standardized set of guidance and tools that are available to departments to ensure consistent, effective monitoring of procurement-exempt Agreements. The County should develop and promulgate guidance (e.g., a “toolkit” of policies and procedures) concerning Agreement compliance monitoring. Such guidance should be based on best practices in contract administration/monitoring and would be required to be used by the contract administrators designated by each department.
3. A formalized process is not in place to ensure that designated contract administrators complete available training courses and are adequately qualified and prepared to effectively monitor compliance with procurement-exempt Agreements. The County should develop a contract administration certification program that would ensure that designated contract administrators across all departments receive proper training, are equipped with the appropriate tools and knowledge, and are aware of their duties and the County’s expectations regarding the monitoring of contractor compliance with procurement-exempt Agreements.

## Objectives

This report summarizes the contractor compliance monitoring review (review) performed by SC&H Group, Inc. (SC&H), under contract with the Montgomery County (County) Office of Internal Audit (MCIA). The review focused on evaluating the County's contractor monitoring processes related to procurement-exempt Agreements (Agreements).

Specifically, SC&H was engaged by the County to achieve the following objectives:

1. Assess County performance and compliance monitoring processes applicable to Agreements.
2. Assess whether the Agreements contain clearly stated and measurable performance requirements.

## Background

### Agreement Types

County Agreements are classified into two types, Chapter 11B (of the Montgomery County Code) Procurement Contracts ("Procurement Contracts") and procurement-exempt Agreements ("Agreements"). The following provides a summary of each type of contract.

- Procurement Contracts<sup>2</sup>: The Office of Procurement (Procurement) is responsible for assisting County departments in the provision of required goods or services under Procurement Contracts. Within the guidance of the County's procurement regulations, Procurement works with departments to document the specific goods or services needed, and helps in the identification, evaluation, and selection of potential suppliers. Procurement Contracts are developed to specify the requirements and expectations of the relationship between the County and the vendor, including all deliverables, service delivery requirements, payment terms, and the rights and responsibilities of each party.
- Agreements: There are certain Agreements that are deemed exempt from, or not subject to, the County's procurement regulations – either as a result of legislation that has been enacted, or because of the nature of the purchase. For example, Section 11B-4 of the Montgomery County Code identifies specific exemptions from the procurement regulations. In circumstances where a department seeks to obtain goods or services exempt from procurement regulations, an Agreement such as a Memorandum of Understanding or Memorandum of Agreement (MOU/MOA) is executed between the County and the vendor or other participating entity (e.g., other government agencies). Other types of Agreements include leases, licenses, and permits; these were not the subject of this review.

The following examples of procurement-exempt payment codes were the specific focus of this review:

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<sup>2</sup> Montgomery County Code Chapter 11B. Contracts and Procurement:  
[http://library.amlegal.com/nxt/gateway.dll/Maryland/montgom/partiilocallawsordinancesresolutionsetc/cha/pter11bcontractsandprocurementnote?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:montgomeryco\\_md\\_mc\\$anc=JD\\_Chapter11B](http://library.amlegal.com/nxt/gateway.dll/Maryland/montgom/partiilocallawsordinancesresolutionsetc/cha/pter11bcontractsandprocurementnote?f=templates$fn=default.htm$3.0$vid=amlegal:montgomeryco_md_mc$anc=JD_Chapter11B)

Payment Code	Description
999011	Housing Opportunities Commission payments
999081	Services relating to operating facilities for the County's solid waste management system
999073	Memorandum of Understanding (MOU)
999019	Loan disbursement
999052	Participation Agreement/MOU
999009	Economic Development Partnership

The chart below summarizes the total spending in FY2018 under Procurement Contracts and Agreements. The procurement exempt spending reflects payments coded with one of the procurement-exempt payment codes as provided by the Department of Finance's Accounts Payable:

FY18 – 11B Spending <sup>3</sup>	FY18 – Procurement Exempt Spending
\$817,500,000	\$113,984,690

### Agreement Monitoring

Agreement monitoring is the process of ensuring that the contractor/vendor delivers the contracted goods or services in accordance with the agreed upon terms and payment is issued for the agreed amount. When the County enters into an Agreement, the using department designates a contract administrator that is primarily responsible for monitoring compliance with the terms and obligations of the Agreement. The contract administrator is responsible for ensuring the work is performed, all deliverables are provided, and County funds are disbursed in accordance with Agreement terms.

### Related Reviews

SC&H previously conducted an internal process and control review<sup>4</sup> that focused on understanding the roles and responsibilities of Procurement, the Department of Finance, and using departments within the Procure to Pay (P2P) workflow, and how it was determined which categories of procurements and programs would be exempt from the County's procurement regulations.

SC&H also previously conducted a program review<sup>5</sup> that was focused on evaluating transactions that were processed using a "procurement-exempt" commodity/payment code, and the documentation supporting vendor payments.

<sup>3</sup> See Montgomery County Contract and Services Spending Summary (FY18):

[https://spending.data.montgomerycountymd.gov/#!/year/2018/explore/0-/expense\\_category/Contract+and+Services/0-/service](https://spending.data.montgomerycountymd.gov/#!/year/2018/explore/0-/expense_category/Contract+and+Services/0-/service)

<sup>4</sup> See Internal Control Review: Procurement to Pay – Specific Functions (MCIA-18-1; May 9, 2018):

[https://www.montgomerycountymd.gov/exec/Resources/Files/Internal\\_Control\\_Review\\_of\\_Procure\\_to\\_Pay\\_5-9-2018.pdf](https://www.montgomerycountymd.gov/exec/Resources/Files/Internal_Control_Review_of_Procure_to_Pay_5-9-2018.pdf)

<sup>5</sup> See Review of Procurement Exempt County Programs (MCIA-19-1; January 15, 2019):

[https://www.montgomerycountymd.gov/exec/Resources/Files/audit/ProcExemptProgramReview\\_01152019.pdf](https://www.montgomerycountymd.gov/exec/Resources/Files/audit/ProcExemptProgramReview_01152019.pdf)

## Scope and Methodology

The review was conducted from June 2019 to August 2019. The review focused on information and support related to department and Agreement-level compliance monitoring processes specific to Agreements. The following departments were selected for inclusion based on their respective procurement exempt spending in FY18, as provided by Accounts Payable:

No.	Montgomery County Department	Amount of Non-11B Spend (FY18)
1	Department of Environmental Protection (DEP)	\$9,949,765.89
2	Department of General Services (DGS)	4,733,104.47
3	Department of Housing and Community Affairs (DHCA)	29,554,703.78
4	Department of Transportation (DOT)	33,631,415.46
5	Montgomery County Police Department (MCPD)	434,966.50 <sup>6</sup>
<b>Total Spend Amount</b>		<b>78,303,956</b>
<b>County-wide Spend Amount</b>		<b>\$113,984,690</b>
<b>Percentage of Coverage of Total Non-11B Spend (FY18)</b>		<b>68.7%</b>

In order to achieve the objectives, SC&H performed the following:

### Data Collection

MCIA and SC&H sent an initial information request to each department to obtain: responses to preliminary questions, existing policy and procedure documentation, and information about Agreements. The Information provided by each department was used to identify a total of 15 Agreements to include within the scope of the review.

Upon receipt and review of documentation, SC&H conducted interviews with each department to gain further understanding of departmental procedures and to gain a detailed understanding of each Agreement.

### Department-Specific Compliance Monitoring

SC&H conducted department-specific interviews to develop an understanding of the current internal control environment surrounding Agreements. The procedures performed included documenting the current performance and compliance monitoring policies, processes, and practices for Agreements within each selected department, assessing the effectiveness and gaps in these existing processes, identifying risks that need to be addressed, and identifying suggested improvements.

### Agreement-Specific Compliance Monitoring

SC&H conducted department-specific interviews to develop an understanding of the terms and requirements of each selected Agreement, including the roles and responsibilities of both the County and the Contractor. Through the Agreement-specific procedures performed, we determined that performance objectives for each selected Agreement are clearly stated and measurable. Further, the requirements for payments by the County are clearly stated, and the

<sup>6</sup> This amount was reflected in FY18 procurement-exempt spending provided by Accounts Payable, but does not appear to reflect the total amount paid under the subject Agreement..



department demonstrated/documented completion of requirements when approving the payment of invoices.

As part of the review we attempted to determine whether guidance concerning Agreement monitoring had been developed and issued to departments. We determined that with the following two exceptions, such guidance had not been developed and issued:

- Accounts Payable has issued policies that outline the requirements for processing payments for procurement-exempt goods or services. Departments submit supporting documentation and appropriate evidence of review and approval when submitting invoices for payment.
- Administrative Procedure (AP) 2-4 (*Agreements between Montgomery County Government and Other Organizations*) had been issued as an interim AP on September 11, 2018, and was just recently issued in final form on August 14, 2019. [NOTE: The final AP 2-4 was published subsequent to the completion of the fieldwork phase of this review.]

#### Existing Procurement Guidance

SC&H also reviewed existing guidance issued by Procurement to assist contract administrators assigned by departments to monitor Procurement Contracts. A separate tab within the Procurement intranet site maintains documentation from prior informational forums that were conducted for contract administrators from 2011 through 2017. The forums included topics such as procurement regulations, “green” purchasing, and contract negotiations. We could identify no guidance on the Procurement website concerning contract compliance monitoring, *per se*.

#### Payment Testing

Based on data collection procedures and a review of each Agreement, SC&H selected one payment for each of the 15 Agreements. For each payment, we obtained supporting documentation to evaluate the review and approval of each invoice. The objectives of the payment testing procedures were to determine if:

1. Invoices were appropriately reviewed and approved prior to the payment date.
2. Invoice amounts were mathematically accurate.
3. Supporting documentation justified the amount paid by the County.

#### Department-Level and County-Level Analyses

SC&H aggregated the information obtained through the department and Agreement-specific compliance monitoring procedures, and the results of the payment testing. The information was used to document the current performance and compliance monitoring policies, processes, and practices for Agreements within each selected department, and to assess the effectiveness of the existing processes.

Using the departmental analyses, SC&H reviewed and identified risks that appear to exist across multiple departments and may represent County-wide risks that should be considered and addressed. The potential County-wide issues are presented in the **Findings and Recommendations** section of the report.

## Findings and Recommendations

SC&H identified three findings related to County-wide oversight of Agreement compliance monitoring. The findings and supporting recommendations should be considered to help improve the monitoring of Agreements across the County.

### **Finding 1: County-level oversight of procurement-exempt Agreement monitoring**

#### **The County lacks a centralized office responsible for oversight of Agreement monitoring.**

The County does not have a centralized office responsible for oversight of the County Agreement compliance monitoring function and with the responsibility of overseeing and assisting department-level compliance monitoring of Agreements.

The decentralized nature of monitoring compliance with Agreements results in a lack of consistency across departments in the formalization and documentation of monitoring procedures and with the specific monitoring activities performed by each department. In such a decentralized environment, it is important to ensure that there is a central business office responsible for oversight of the County's Agreement compliance monitoring programs, including policies and training of contract administrators.

#### **Risks**

Inconsistent monitoring of contractor compliance across departments could result in:

- Non-compliance with Agreement terms and requirements
- Failure to meet agreed-upon delivery timelines
- Deficiencies in the quality of goods or services provided
- Inappropriate payments made to contractors

#### **Recommendation 1**

SC&H recommends that the County designate an entity or group with the responsibility to provide oversight of department-level contractor compliance monitoring of Agreements to ensure that monitoring is consistent across the County.

### **Finding 2: Standardized guidance for monitoring of procurement-exempt Agreements**

#### **The County lacks a standardized set of guidance and tools that are available to departments to ensure consistent, effective monitoring of procurement-exempt Agreements.**

Each department is responsible for developing and implementing its own reports, checklists, etc. for monitoring contractor compliance with Agreements.

Through the review, SC&H noted that the Agreements that were reviewed did not include consistent monitoring tools (reports, checklists, etc.) – not only across departments, but also across different Agreements within the same department. The monitoring tools used with these Agreements were developed in many cases by each contract administrator, so the level of documented monitoring results (e.g. performance metrics, timeliness, quality, etc.) varied by Agreement.

In some instances, department personnel referenced the adoption of two Procurement documents for their monitoring of Agreements. The documents referenced were:

1. PMMD 45: This document is the “*General Conditions of Contract Between County & Contractor*”. This document includes the terms and conditions that the County includes in each Procurement Contract. PMMD 45 includes *Section 6: Contract Administration* that contains the duties assigned to a contract administrator. Departments indicated they used this document as a guideline for the expectations of the role of the contract administrator in monitoring Agreements.
2. PMMD 15: This document is a template “Contract Monitoring Report” that is completed by using departments to document contractor performance during the term of a Procurement Contract. The report is completed by the contract administrator and submitted to the Director, Office of Procurement, upon completion of a contract, or prior to the extension of a contract term. Departments indicated that they used this template to document contractor compliance issues. However, it is not clear where such a completed form, in the event of an Agreement compliance issue, would be submitted since the Office Procurement does not have responsibilities for Agreements.

SC&H reviewed PMMD 15 and 45 and determined that neither could appropriately be referred to as “guidance” that could be relied upon by contract administrators for ensuring contractor compliance with Agreements was being adequately monitored. We further reviewed the guidance available from Procurement via the Contract Administrator Forum intranet page. The information provided related to contract monitoring did not include a sufficient level of detail or specifics to be considered as guidance that could be leveraged by contract administrators responsible for monitoring contractor compliance.

#### Risks

The lack of standardized guidance, consistently used across all County departments, could result in:

- Failing to identify and resolve contractor compliance issues timely
- Inability to recognize contractor failure to meet agreed-upon performance metrics
- Insufficient monitoring of progress/delivery timelines

#### Recommendation 2

The County should develop and promulgate appropriate policies and guidance (e.g., a “toolkit” of policies and procedures) concerning Agreement compliance monitoring. Such guidance should be based on best practices in contract administration/monitoring and would be required to be used by the contract administrators designated by each department.

Guidance could include elements such as:

1. The development of a statement of Agreement goals, milestones and performance measures (linked to a clear pricing/payment structure and payment terms) for inclusion in the Agreement.
2. Establishment of periodic reporting and a report template that can be adapted and used by contractors to provide information to the contract administrator needed to evaluate contractor compliance with Agreement requirements.
3. Defining an issue management process for identifying, documenting, tracking, escalating (if needed), and resolving contractor compliance issues within the department.

See the National Association of State Procurement Officials (NASPO) Best Practices Guide, available at: <https://www.naspo.org/ContractAdministrationBestPractices> for additional discussion; excerpts included at Appendix A.

### **Finding 3: Qualifications of contract administrators**

**A formalized process is not in place to ensure that designated contract administrators are adequately qualified and prepared to effectively monitor vendor/Agreement performance.**

The County offers a set of specific contract administrator trainings (the Contract Administration Learning Path). There are no requirements for department personnel to complete these trainings to be designated as a contract administrator.

Through the procedures performed, SC&H identified contract administrators that had not completed all of the courses provided through the County's Contract Administration Learning Path, and were not able to provide documentation evidencing the completion of other structured training or continuing education that would evidence their ability to effectively monitor contractor compliance with Agreements. Further, none of the five departments had a process in place to assess the qualifications and experience of designated contract administrators; and there was inconsistency across departments in ensuring contract administrators had completed applicable training courses.

#### **Risks**

Without adequate training and preparation, contract administrators may not have the knowledge, experience, or skills necessary to properly monitor contractor compliance with procurement-exempt Agreements.

#### **Recommendation 3**

The County should develop a contract administration certification program that would extend to administrators of Agreements across all departments. The program would ensure that designated contract administrators have received proper training, appropriate to the scope, size and complexity of the Agreement; are equipped with the appropriate tools and knowledge; and are aware of their duties and the County's expectations regarding the monitoring of contractor compliance with Agreements.

- This certification program should be a pre-requisite to being designated as a contract administrator.
  - Certification should be centrally tracked to ensure all personnel have completed the required program prior to be assigned the role of contract administrator.
- The certification program should identify an initial set of training requirements based on the skills and abilities identified as critical to the success of contract administrators in monitoring contractor compliance.
  - Along with identifying the training requirements, the County should assess whether the expertise to provide effective training on the specified topics exists in-house, or if third party training courses would better prepare contract administrators.
- The program should also include continuing education requirements to ensure contract administrators remain informed regarding current trends and changes within the industry.

- The County could also consider establishing different levels of training requirements that correlated to the dollar value and/or complexity of Agreements.

## **Comments and MCIA Evaluation**

We provided the County (departments included in the review, as well as the Office of Procurement) with a draft of this report for review and comment, and received no substantive comments on the report..

# Appendix A: Best Practices Guidance

Information provided within this appendix was obtained from the National Association of State Procurement Officials (NASPO)<sup>7</sup>.

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## NASPO

### Contract Administration – Best Practices Guide

#### **Scope and Definitions**

This NASPO resource contains the best practices of state central procurement offices for contract administration, taking place once a contract has been awarded and signed (that is, after any negotiations), including contract monitoring and administration activities.

The goal for the Best Practices Committee's Contract Management Work Group effort was to create a tool for the membership and public procurement professionals, including helpful steps and guidance for effective contract administration. The steps and recommendations provided in this Guide are based on state practices and common processes identified by the work group through survey responses, state contract management guides and group interview discussions.

#### **Essential Elements**

This section discusses a few key elements essential to effective contract administration. While these principles may be applied to all contracts, we recognize that some contracts require more oversight than others, depending on the complexity of the work being performed, risk involved and dollar amount of the contract.

State contract success is dependent on effective contract management and contract administration processes, which lead to lower operational costs, increased user agency satisfaction, and efficiency in delivering services to taxpayers.

To that end, states developed Contract Management Guides/Manuals and checklists to provide guidance to agencies regarding contract management practices and statutory requirements.

Contract management is successful when a few essential elements are in place and the process includes:

- Preparing a Contract Administration Plan (CAP);
- Convening kick-off meetings;
- Scheduling regular meetings or on-site visits to customer agencies to monitor and discuss the progress of the contract and contractor's performance;
- Training for best practices in contract management;
- Establishing good communication between the central procurement office and customer agencies before, during, and after the contract has been awarded and signed. This keeps all parties informed of compliance statues and potential issues that may affect the fulfillment of the contractual obligations;

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<sup>7</sup> The National Association of State Procurement Officials (NASPO) Best Practices Guide, available at: <https://www.naspo.org/ContractAdministrationBestPractices>

- Allowing changes to specifications and terms and conditions within the general scope of the original contract;
- Collecting meaningful data from user agencies;
- Assessing contract risks and monitoring after the contract has been awarded;
- Establishing performance metrics;
- Implementing reporting tools and having processes in place for user agencies to report deficiencies to the central procurement office;
- Using tracking tools to monitor spending patterns and whether a contract is working as intended;
- Collecting data from users regarding contract performance and customer needs for existing contracts, which is critical when drafting specifications to include in the next contract for similar products or services; and
- Having procedures in place for expedient resolution of contract disputes and claims, encouraging informal resolution while ensuring that the contractor has a fair opportunity to be heard.

### **Contract Administration Process**

#### *1. Kick-off/Pre-performance Period*

NASPO recommends conducting pre-performance conferences or project “kick-off” meetings with all interested parties, especially for high-risk, high-dollar value contracts. All states interviewed conduct some type of a “kick-off” meeting at the initial period of performance. These tend to be very informal discussions and are not set up for all contracts. These meetings are important communication tools to use at the beginning of contract performance to discuss the roles and responsibilities for the central procurement office, agency, and the contractor, to determine how performance will be evaluated, documented and reported, and how best to set performance metrics, among other things. Having a good understanding of the standards of performance helps establish a positive relationship between the procurement office and contractor.

The NASPO State and Local Government Procurement: A Practical Guide recommends that all parties involved have a thorough understanding of their roles and responsibilities. There should be close communications, as early as possible, between the central procurement office and user agencies, so that members of the contract team know their authority, roles and responsibilities, and understand the importance of communication and coordination among the team.

Contractors who are successful in a competition must comply with business registration requirements and submission of financial documents prior to commencement of the contract, as a matter of showing that they meet responsibility criteria. As a part of the contract award process, state contracts are not executed before all documents are received, or in some states, the state may reject an otherwise successful vendor, due to failure to submit the required documentation, to timely submit it, or to provide documentation that does not meet applicable responsibility criteria.

#### *2. Ongoing Maintenance for the Duration of the Contract*

This is an important stage in the contract administration process. The contract manager plays a critical part and needs to ensure that all elements and planning tools that will guide the implementation are in place.



The NASPO State and Local Government Procurement: A Practical Guide recommends preparing a Contract Administration Plan (CAP) to document all aspects of the procurement process from the development of specifications to the contract closeout. The CAP document is a tool developed in the pre-award stage of contract management to aid in contract administration and ensure that all activities are carried out effectively.

The CAP should include critical elements and activities for effective contract management and quality assurance. Additional information that should be documented in the CAP include:

- Contract administration team members;
- Justification of solicitation source selection method;
- Scope of work or specifications that include deliverables;
- Contract goals;
- Pricing structure for contract;
- Delivery terms and requirements;
- Potential contractual risks and assignment of risk levels;
- Key contract terms and conditions to include risk mitigation and information security;
- Contract monitoring methods;
- How performance will be measured and accepted;
- Milestones for measurement (linked to payment terms);
- Payment terms;
- Reporting method and frequency;
- Documentation required; and
- Names of contract administration team members responsible for measuring performance, reporting, documenting files, payment, approval of change orders, contract closeout checklist, procedures, and who is responsible for contract closeout files.

The central procurement office should work with user agencies to determine:

- Roles and responsibilities and who is responsible for each activity;
- How performance will be evaluated, including milestones and performance metrics;
- Monitoring methods;
- Reporting tools and processes; and
- Process for resolution of disputes and claims.

Having the proper tools in place to support the procurement office in fulfilling its contract management and administration role is an essential element. However, some states continue to rely on home-grown solutions in the absence of some contract manager software. There is an opportunity for states that have implemented robust eProcurement systems to consider implementing a contract management module and fully utilize the existing functionality statewide, if a contract management solution is in place.

### *3. Monitoring Contractor Performance, Documenting and Record-keeping*

Monitoring contract performance is a key function in the contract administration process to make sure that all involved parties are performing their duties in accordance with the contract.

Twenty-three percent of the State Central Procurement Offices participating in the 2018 NASPO Survey of State Procurement Practices record and track contractor performance. Delivery, service level, end user and stakeholders' vendor performance rating, final decisions on agency complaints were some of the aspects of vendor performance tracked and centrally reported.

Requiring contractual usage reports is a practice used by many states. However, the content and compliance of contractor responses can vary.

Gathering feedback from user agencies about the service received and contractor performance, typically through surveys, telephone or face-to-face inquiry are some of the tools used by central procurement offices. 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. All contract performance issues should be properly documented and included in the official contract file.

Documenting contract compliance and performance issues when the contractor is not able to perform as agreed upon and addressing them timely is an important activity in the administration process. Regular communications with the contractor should identify problems timely. Dispute resolution processes need to be in place to resolve problems and reach agreement rather than seeking legal remedies. Managing documentation is especially important in cases of disputes, assessment of liquidated or actual damages, and for justifying termination for default.

A good practice for state central procurement offices is to provide written guidance to agencies on contract disputes and escalation procedures. The process for managing issues arising in contracts and how claims and disputes are addressed should be set in the contract terms and conditions.

Poor or non-performance should never be accepted. That is why documenting problems is critical when requesting a cure.

### **Challenges and Useful Tips to Overcome Barriers to Effective Contract Management**

We have identified a few challenges based on group interview discussions with NASPO procurement professionals. Some of these challenges do not have easy solutions, so tips and “words of wisdom” are provided here in hopes they may help other states who face similar hurdles in managing contracts effectively.

#### Challenges

Statutes, procurement rules, or regulations tend to provide insufficient guidance to procurement officials relating to the role and duties regarding contract administration. Without a formal state-level framework and requirement for contract administration and monitoring, providing guidance for effective contract management throughout the life of a contract requires a leadership role by the central procurement office and CPO. Here are some other common challenges:

- Not having a separate contract administration group;
- Having legal authority/responsibility for contracts performed away from the central procurement office;
- Contract administration tends to take a back seat unless there is a problem with the contract;
- State central procurement office being reactive rather than proactive, which can help prevent problems with contract administration before they occur;
- Agencies having independent procurement authority, but lacking the required skills and qualifications needed for effective contract administration;
- Time-consuming manual processes still present in many procurement offices;
- Complexity of goods and services being purchased;

- States not having contract management software to support the contract management function;
- Manually collecting and managing contractual usage reports from contractors via Excel or Access, which is time consuming;
- Rollout in progress or slow implementation of contract management software statewide; and
- Electronic signature still unavailable in some states.

#### Useful Tips and Solutions

- Provide clear guidance for developing, awarding and monitoring contracts;
- Provide training to procurement staff involved in contract management, including contract administration and monitoring activities;
- Communicate as early as possible and conduct pre-performance conferences or kick-off meetings;
- Emphasize the importance of having kick-off meetings to discuss requirements, performance; metrics, etc.;
- Create a separate contract administration group and hire procurement personnel with the appropriate contract management skills set;
- Build relationships with customer agencies;
- Maintain communications and business relationships with contractors;
- Monitor and track contract performance;
- Document communications and contract changes;
- Provide progress reports regularly; and
- Be diligent in managing your contracts and hold contractors accountable to the contract terms and conditions.

And finally, effective contract management is primarily demonstrated by a few factors:

- High contract user satisfaction;
- Very limited or no changes to the contract;
- No claims or disputes;
- No increased costs resulting in inefficient use of taxpayers' dollars;
- A contract file that contains the essential record of contract award and performance; and
- No contract ambiguities, fraud or conflict of interest issues.