



D SUNY
DOWNSTATE
Medical Center

Contract Monitoring

Presented by the Contracts & Procurement Department

Contract Monitoring

- DMC Departments who have contracts specific to their department should have a process to monitor and evaluate contractors' performance to determine whether contractors deliver goods and services in accordance with the contract terms and other requirements.



Contract Terms

- Contract terms should be Specific, Measurable, Achievable, Relevant and Time-bound (SMART).
- Specific terms are well-defined, focused and explicit. Measurable terms are concrete and define such attributes as quantity, quality, and cost.



SMART

Specific:	Scope and purpose of the contract; the contract period; services to be performed and, where necessary, the specific individuals to perform the services; commodities to be provided; location(s) where the work is to be performed; and the actions that will occur in the event the contractor does not comply with contract terms (e.g., corrective action, repayment of overcharges, full fiscal review of all invoices, and contract termination)
Measurable:	Quantities of commodities or service to be provided; number and nature of clients served; target dates; unit or fixed prices for goods and services; level of expertise required to perform the required work, such as professional licenses, certifications, and educational degrees
Achievable:	Realistic deliverables from the contractor or specific circumstances in which the contractor may subcontract for commodities and services outside the contractor's area of expertise
Relevant:	Performance requirements essential for the contract; record keeping and reporting requirements; billing requirements, such as a full description of goods or services provided, personnel listed by name, title, and hours worked, whether invoices should be electronic or paper, method for submitting invoices, and signatures or authorizations required
Time-bound:	Specific dates or deadlines for delivery of the goods and services; time frames for billing



Scope of Services

- What is the contractor expected to do?
- When is the contractor to provide the deliverables?
- Where is the contractor to perform required activities?
- How will the contractor communicate to DMC that contract terms have been satisfied?
- How is the contractor to bill DMC for goods or services?
- How much money is the contractor allowed to bill the DMC for goods or services?
- What information must be included on the invoice?
- How and to whom should the contractor send the invoice?
- What's at risk if the contractor fails to perform as required?

In addition, managers should be able to answer these questions for each contract term:

- How will DMC verify that the contractor did exactly what was expected for the contract term?
- What is the DMC's recourse if the contractor does not perform as required?



Contract Monitoring Steps

Effective contract monitoring includes the following steps:

1. Identify a prioritized list of contracts to monitor
2. Understand contract terms and other requirements
3. Identify risks
4. Prioritize risks
5. Determine the agency's response to the risks
6. Design and implement monitoring activities
7. Follow up



1. *Identify a Prioritized List of Contracts to Monitor*

- How critical the contract is to achieving DMC's mission,
- Likelihood that nonperformance, or underperformance, would jeopardize health or safety,
- Dollar value of the contract,
- Total number and aggregate dollar value of all contracts with individual contractors at DMC and among all State agencies,
- Favorable and unfavorable knowledge of contractors' performance,
- Age of the contract,
- Length of time the contractor has been doing business with DMC,
- Information in the contractor's audited financial statements, including the notes, where available,
- State or Federal agency audit findings for: (i) the contractor or (ii) the goods or services under contract,
- Available public information about the contractor or type of goods or services under contract,
- Availability of alternatives should the contractor be unable to perform,
- Extent to which any contractor's activities, payments or other items within a program do not conform to similar contracts within the program, and
- Impact on public confidence.



2. *Understand Contract Terms and Other Requirements*

- Managers should identify and understand all of the requirements for the contractor.
- Requirements may be embodied in the contract terms and appendices.
- Requirements may also be outside the contract itself, such as requirements in New York State law, the Federal Acquisition Regulations or other industry-specific requirements, such as those published by the Occupational Safety and Health Administration and the American Society of Mechanical Engineers.



3. *Identify risks*

- For each contract term and other requirement not included in the contract, managers need to identify:
 - (i) events or actions that may prevent the contractor from meeting the terms and other requirements, and
 - (ii) actions the contractor may take to receive payment that the contractor did not earn under the contract. This risk identification process can be challenging.

Managers must be skeptical and question many aspects of a contract term or other requirement to identify the variety of ways a contractor may avoid compliance.



4. *Prioritize risks*

- Managers should assess the adverse impact if the identified risks occur.
- The assessment should be done on a predetermined scale, such as a scale of 1 to 10 or low, medium, or high.
- Adverse impacts can include not achieving the agency's mission, mispending dollars, jeopardizing public health or safety, and failure to provide critical services.



5. Determine DMC's Response to the Risks

- Once risks are prioritized, managers can then determine whether to mitigate the risks or accept the risks.
- Risk mitigation strategies include increased contract monitoring, revised administrative processes, increased reporting, improved system controls, increased auditing, and other activities to reduce the likelihood the risk will occur.



6. *Design and Implement Monitoring Activities*

Managers should create a written monitoring plan for each risk they determined should be mitigated. Monitoring activities should be specifically assigned to appropriate staff and identify:

- The name and or title of the individuals(s) who will perform monitoring activities,
- The activities the monitor(s) will perform, including the type of evidence the monitor(s) will obtain to determine whether the contractor complied with the contract terms,
- Where the monitor(s) should complete the activities,
- How often the monitor(s) should complete the activities,
- How the monitor(s) should document the outcome of the monitoring activities,
- Who should received the documentation, and
- Where the documentation will be stored.



7. Follow-up

Degree of Compliance with Contract Terms and Other Requirements	Agency Response
High	<ul style="list-style-type: none"> • Re-evaluate and possibly reduce monitoring frequency
Moderate	<ul style="list-style-type: none"> • Direct the contractor to correct identified deficiencies
	<ul style="list-style-type: none"> • Facilitate development of a corrective action plan
	<ul style="list-style-type: none"> • Advise accounts payable employees
	<ul style="list-style-type: none"> • Identify and recover any overpayments
	<ul style="list-style-type: none"> • Increase scrutiny of contractor reports and invoices
	<ul style="list-style-type: none"> • Increase frequency of follow-up monitoring activities
Low	<ul style="list-style-type: none"> • Facilitate development of a corrective action plan (where practical) and increase the frequency of follow-up monitoring activities
	<ul style="list-style-type: none"> • Increase scrutiny of contractor reports and invoices
	<ul style="list-style-type: none"> • Terminate contract where corrective action is not practical
	<ul style="list-style-type: none"> • Advise accounts payable employees
	<ul style="list-style-type: none"> • Identify and recover any overpayments
	<ul style="list-style-type: none"> • Consider referral for prosecution



Knowledge, Skills and Abilities

DMC can increase the overall success of contract monitoring by ensuring the monitors have the appropriate knowledge, skills and abilities to carry out the activities to identify, prevent and reduce contract risks.

- Knowledge: the degree of familiarity with contract terms, applicable legal requirements, relevant agency policies and guidelines, and potential fraud schemes.
- Skills: the level of competence and expertise in programmatic and fiscal contract monitoring, observation, analysis, written and oral communication, judgment, problem solving, conflict management and interpersonal skills.
- Abilities: the demonstrated performance of effectively applying the knowledge and skills when needed.

Managers may find it beneficial to incorporate relevant knowledge, skills and abilities into monitors' performance expectations, training plans, and evaluations. Also, managers should consider establishing written policies, procedures, and/or task lists for monitors.

