

Form Instructions

Contract for Services of an Independent Contractor

The revised Contract Form template is a Word document. It has been significantly modified with respect to the insurance schedule that in the past was located in the body of the contract. Risk Management has created a web-based insurance manual, [“Insurance and Indemnification Requirements for Contracts.”](#) This manual was developed in partnership with the Attorney General’s office and the Purchasing Division to assist agencies with developing insurance specifications for their solicitations and State contracts.

Risk Management recognizes that some of the State’s current contracts may not meet the specifications as listed in the manual. It is not necessary to revise those contracts currently in force; rather the new requirements should be introduced upon contract renewal. The purpose of the manual is to make available insurance and indemnification information that is more tailored to the specific types of contracts entered into by State agencies. The manual is not intended to take the place of personal interaction between agencies and the Risk Management Division regarding any questions that may arise about insurance requirements. Risk Management recognizes that there is no "one size fits all" approach to these kinds of issues, and also recognizes that some contracts may pose specialized risks that require further review. Agencies are still encouraged to contact the Risk Management department for additional information. Risk Management should review any agreements that include performance bonding.

Completing the Contract Form

The contracting agency and contractor information at the top of page one (1) of the contract should be filled out completely and should identify: the agency, agency contact and title, address, telephone and fax numbers. The same information should be provided for the contractor, the federal tax identification number should not be included. The language within the contract form limits the sections that can be modified by the contracting agency without prior approval from the Attorney General’s Office. The following addresses the sections agencies have authority to modify.

Section 3. Contract Term: Identify the date the contract will become effective, this is either prospective (contractor starts work on a date after Board of Examiners approval), retroactive (contractor started work on a date *before* Board of Examiners approval), or it is upon/subject to Board of Examiners’ approval (contractor can start work date contract approved). Agencies should identify the date of the Board of Examiners meeting the contract is anticipated to be approved. **It is important to note:** Contracts should not contain retroactive effective dates unless extraordinary circumstances exist that may justify the use of such as provision. All retroactive contracts must be submitted to the Budget Division with a memorandum of justification. The termination date is the date the contractor is to have completed all work identified within the scope of work (Attachment AA, generally).

Section 4. Notice: Agencies are to fill in the number of calendar days prior notice they require in the event of contract termination, usually thirty (30) days. However, there are specific

instances where an agency may require as few as five (5) days or as many as one hundred and eighty (180) days. This is often determined by the agency based on type of contract, availability of other contractors and importance of service.

Section 5. Incorporated Documents: In most instances, the State Solicitation, whether an informal quote or a Request for Proposal (RFP) identifies the scope of work, and is generally incorporated in the highest order of precedence as Attachment AA to the contract, the Insurance Schedule will be incorporated as Attachment BB, and the Contractors Response is generally incorporated as Attachment CC.

In instances where an agency has negotiated separate items, they are most often incorporated into the contract as Attachment CC, and at a higher precedence than the Contractors Response. Negotiated items usually do not change the State's scope of work or insurance requirements. Occasionally, an agency may negotiate modifications or changes to the scope of work or insurance requirements. When this happens, the negotiated items are incorporated as Attachment AA, and the original State Solicitation as Attachment BB, because the negotiated items changed what the State initially requested, the Insurance Schedule would become Attachment CC, and the Contractor's Response would move down in the order of precedence to Attachment DD and so on. In light of the aforementioned, agencies are reminded to pay special attention to the incorporated documents and their order of precedence because this is very important in the event of a legal issue.

The incorporation of the Insurance Schedule through Attachment BB, is a major change to the contract form. As discussed, Risk Management developed a manual for agency use to assist with establishing the appropriate insurance specifications. The manual is broken down into sections that address specific exposures related to various types of contracts. The sections include insurance schedules that are designed to be copied and pasted into Attachment BB to create the actual contract insurance schedule (limits). As long as the scope of work contemplated in the contract is similar to the scenarios described within the manual, agencies are required to use at least the minimum insurance limits listed. If there are specific questions about the insurance limits contained in the manual, please contact the Risk Management for more information.

Section 6. Consideration: Agencies can change the template contract language in Section 6 to a brief, specific and legible statement identifying the cost or rate that services will be billed or payable, including any travel expenses contemplated. This section may include references to attachments within Section 5: Incorporated Documents. All contracts must include a "not to exceed" amount. Revenue contracts should include the amount the contractor anticipates receiving in revenue as a result of his/her contractual relationship with the State.

Section 15: Independent Contractor: The purpose of this section is to determine the appropriate status (employee or independent contractor) of the contractor. It clearly identifies what constitutes an independent contractor and states that neither the contractor nor its employees, agents nor representatives shall be considered employees, agents or representatives of the State. There are seven (7) questions that the contractor must read and initial their response as either a "yes" or a "no." A check mark or "X" indicating "yes" or "no" is not acceptable.

Some of the questions may have a “yes” response; in those instances the contracting agency must be able to specifically identify why that response is a “yes”. A “yes” response to questions 6 and 7 would indicate that the relationship is not that of an independent contractor, but that of an employee and will be rejected by the Budget Office.

Signature Page: Agencies must ensure that individuals signing the contract have the appropriate signature authority. The date the contract is signed by the Clerk of the Board of Examiners is the date the contract is approved and the contractor can start work, unless otherwise identified in Section 2 as a prospective date for work to start. A retroactive contract is required for work started prior to the contract being approved by the Board of Examiners. If a proposed contract contains a retroactive date to cover services already rendered to the agency, and the Board of Examiners does not approve the contract, the agency could be subjecting the State to litigation for payment of services already rendered.

Please contact your Certified Contract Manager, Deputy Attorney General, the Purchasing Division or other agency assigned staff if you have any questions or if you are uncertain how to complete a particular section of the Contract Form.