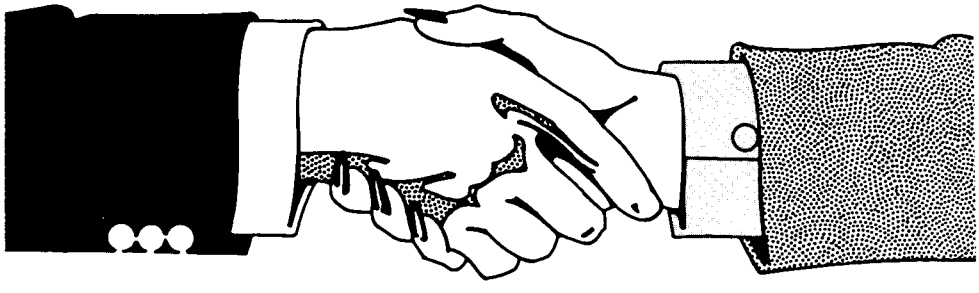
Managing Contracts



A Guide for Contract Administrators

MANAGING CONTRACTS
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The definitions and explanations in this Guide were developed by a team of purchasing specialists from several Wisconsin state agencies and the University of Wisconsin. The materials are written for program managers and specialists working in a variety of occupations who may be newly designated "contract administrators."

This document provides basic guidelines and hints for successfully representing the State's interests in a contract. However, the majority of the duties and responsibilities of a contract manager are governed not by a manual, but by common sense, an understanding of the mutual obligations of the contracting parties, and a sense of fair play.

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Contract Management Guide

I. Getting Started in Contract Management: The Basics

A. Designation of Project/Contract Administrator: Management will name a contract **administrator**, preferably before the procurement process has been initiated. The administrator is a customer of the procurement process and is usually located in the bureau/unit responsible for the administration of the related program. The administrator is a stakeholder who will be responsible for the proper implementation of all contract specifications by the contractor(s).

The administrator should be closely involved in the development of the Request for Bids/Proposals, helping to define the scope of services, contractor qualifications and contract specifications. The administrator's involvement during the pre-contract administration processes, including negotiations, will ensure that he or she develops a comprehensive knowledge of the program requirements and the intent of the contract. Obtaining a historical perspective of the creation of the contract will assist the administrator in making contract management decisions, especially if a dispute arises.

B. Review of Contract: The administrator should read all documents relating to the contract. These include: the RFB/RFP, contractor's RFB/RFP response, significant correspondence relating to the establishment of the final contract and the contract itself.

If the administrator was not involved in the procurement process, a discussion with those who were involved in the procurement is essential. Issues to explore include:

1. The existence of any controversy in the contracting process.
2. The nature of the negotiations - did they go smoothly or were there significant tensions? What issues were problematic?
3. The possible existence of any verbal promises made outside of the scope of the contract. Although verbal commitments are highly discouraged, they may exist.
4. Concerns regarding the contractor's ability to perform.

C. **Roles & Responsibilities (definitions):** A number of parties are involved in the creation, implementation, performance and administration of contracts.

The Contract Administrator is responsible for ensuring that all contract provisions are adhered to. The administrator ensures quality, documents nonperformance, facilitates problem resolution, reports to Program Management, coordinates actions with procurement (e.g., contract renewals, contract amendments and contract termination) and legal staff when necessary.

Purchasing provides consultation on all aspects of the procurement process. The purchasing agent writes or reviews the RFB/RFP, administers the issuance of the RFB/RFP, awards the contract and helps resolve any related protests. Purchasing also helps write or reviews the contract, facilitates contract negotiations and consults with the administrator throughout the management of the contract when questions or problems arise.

The Contractor is responsible for the performance of all requirements and compliance with all contracts terms. If the contractor (prime) sub-contracts portions of the contract, it is the prime contractor's responsibility to ensure complete performance and compliance by the sub-contractors.

Department Program Managers served by the contractor, like the administrator, are involved in the establishment of the scope of services, contractor qualifications and contract specifications. Management should review all related documents, including the RFB/RFP before it is issued and the contract before it is signed. Management is consulted when significant issues relating to contract performance arise. Management appoints the administrator.

D. **Dealing with Sole Source Vendors:** While competition is the cornerstone of public purchasing, procurements may occur when only one viable contractor is capable of providing the commodity or performing services required. The existence of a sole source procurement must not prevent the contract administrator from enforcing all contract terms. The risk of terminating a contract and the effect the termination may have on a program must be weighed against the expense and disruption of proceeding with a non-performing vendor. Consultation with legal counsel and program management is critical.

E. **Post-Award Conference**: After a contract is awarded, all key parties should meet to discuss contract terms. It is not the intent of this conference to re-negotiate contract terms. During this conference specifics such as time-lines, reporting and problem resolution methodologies are created. Agency key staff who should participate in the conference include the contract administrator, procurement representative, program manager and program staff who are the customers or end users of the services and/or commodities provided by the contractor.

If the administrator was not involved in the procurement process, this conference may be her/his first formal introduction to the contractor's representatives.

A Conference Checklist is provided at the end of this Guide.

F. **Minority Business Enterprises (MBE) as Subcontractors**: The state of Wisconsin is committed to supporting MBE. One strategy is to encourage prime contractors to subcontract work with state certified MBE. A prime contractor may be requested to meet with the Director of the Office of Minority Business in the Department of Administration to identify viable MBE subcontractors. Language regarding this issue is **not** standard on an RFB/RFP. It is included when the agency determines that general market conditions establish a reasonable expectation that certain contract services could be performed or commodities could be purchased from a subcontractor.

The prime contractor is responsible for the quarterly reporting of total dollars paid to the MBE subcontractor. The contractor submits quarterly reports to the contracting agency's procurement office which, in turn, reports to DOA.

G. **Health & Safety (Environmental Issues)**: Health and safety issues have become more prominent in the performance of a contract. The contract should ensure that all applicable federal, state and local health and safety codes and regulations are met. Contracts such as construction and the removal of hazardous waste have the potential for the discovery of an unforeseen environmentally dangerous substance such as asbestos. A contract should outline the terms of managing such an event if it were to occur. Responsibilities of both the contractor and the agency should be outlined. If this issue is not addressed in the contract, a letter of agreement may be established between both parties during the post-award conference.

If the contractor is not capable of addressing the problem or is capable of performing the remediation work but the scope of work is determined to be beyond the authorized scope of the original contract, the agency will be responsible for obtaining remediation services. In the interim, previously

established time lines and performance expectations of the original contract will have to be renegotiated. Again, it benefits both parties to have an established agreement prior to an event.

MSDS (Material Safety Data Sheet) information is required when obtaining any commodities which may harm an employee. State purchase orders have the following notation:

> If any item(s) on this order is a hazardous chemical, as defined under 29 CFR 1910.1200, provide one copy of a Material Safety Data Sheet for each item with the shipped container and one copy with the invoice.

The administrator should ensure that all employees who will have contact with the materials are informed on their proper use and handling.

H. **Illegal Contracts [Wis. Stats. 16.77(2)]**: The administrator usually inherits a completed contract. The administrator may lack the authority to change any terms or conditions of a contract without approval of the procurement authority. Expansion of the scope of the contract or promises for consideration beyond those explicitly detailed in a contract may result in the creation of an illegal contract, either verbal or written.

Wisconsin Stats. 16.77(2) establishes penalties for the creation of an illegal contract by a state employee. The statute holds an employee responsible for the payment of a contract if it is determined that the contract was established without the performance of a proper procurement under state statute, administrative code or administrative policy:

> Wis. Stats. 16.77(2):
> Whenever any officer or any subordinate of an officer contracts for the purchase of supplies, material, equipment or contractual services contrary to ss. 16.705 to 16.82 or the rules promulgated pursuant thereto, the contract is void and any such officer or subordinate is liable for the cost thereof, and if such supply, material, equipment or contractual services so unlawfuly purchased have been paid for out of public moneys, the amount thereof may be recovered in the name of the state in an action filed by the attorney general against the officer or subordinate and his or her bonders.

II. Terms and Conditions

The Standard Terms and Conditions (ST&C) are included in all procurements. Supplements to the ST&C exist for contractual services and information technology (software and hardware) procurements. The ST&C and appropriate supplements are included in the RFB/RFP. A contractor may take exception to the ST&C when responding to a RFB/RFP. Any exceptions are negotiated prior to the signing of a contract. The ST&C that are directly referenced to a state statute cannot be negotiated. Others may be subject to negotiation. In the review of the contract, the administrator must familiarize her/himself with the requirements of the ST&C and with any negotiated exceptions to them.

Listed below are a number of common terms and conditions that may be part of the contract.

A. **Insurance: Certificates of Insurance:** A contractor is required to obtain Worker's Compensation and public liability and property damage insurance. Certificates of Insurance are submitted to the state by the contractor's insurer. It documents that the contractor has obtained the minimum required coverage of:

1. Worker's compensation insurance.

2. Public liability and property damage insurance against claim(s) which might occur in carrying out the agreement/contract. Minimum coverage: $1,000,000 liability for bodily injury and property damage including products liability and completed operations. When vehicles are used to fulfill the contract, minimum coverages are $1,000,000 per occurance combined single limit for automobile liability and property damage.

The contractor must forward Certificates of Insurance to the contract administrator for filing.

B. **Performance Guarantees**: Reference: Adm 7.08, Wisconsin Administrative Code. The state may require, under the conditions listed below, bonds or sureties (guarantees) in order to secure performance of a contract. Sureties may be in the form of certified or cashier's check, cash, irrevocable letters of credit, bonds or other equivalent sureties. Bonding or insurance companies issuing bonds shall be authorized by the Commissioner of Insurance to do business in this state.

1. A bid surety may be required when failure to sign a contact may result in serious harm to the agency.

2. A payment surety may be required to ensure payment to subcontractors.

3. A performance surety may be required when failure to perform the contract on the part of the contractor will result in damages to program, agency, state or award.

Performance Bond: The performance surety is the most common surety used in a procurement. A performance bond is a surety issued by a bonding or insurance company.

The delivery of a commodity or the performance of a service may be so mission-critical that an agency would wish to obtain a guarantee of performance. The dollar value of the guarantee must be reasonable. The determination of a reasonable value is based on the potential damage non-performance may inflict on an agency.

The requirement of a performance bond is established in the RFB/RFP. The agency may require submission of a performance bond prior to signing a contract or within a set number of days after the contract is signed. A commodity should not be delivered or a service performed prior to the submission of the performance bond.

Although the contractor pays for the performance bond, it can be expected that the cost will be built into their cost of contracting.

Irrevocable Letter of Credit : WI. Stats. 405.103(d). "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this chapter (s. 405.102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

A contractor may provide an irrevocable letter of credit in lieu of a performance bond. The letter of credit must have an effective date which includes the anticipated time line for performance of the contract. If a contract is subject to renewal and the letter of credit only covers the original contract period, an updated letter of credit will be required for the renewal of the contract unless the agency waives its rights. In any case, the letter of credit should be in the contract administrator's custody.

C. **Tax Garnishments & Liens**: Tax law allows a state agency to place a claim against a contractor's account receivable with another agency. Common use of this provision is the collection of delinquent taxes. If a tax garnishment or lien is filed, the contractor must be notified that its payment is being directed to the claimant. Any resolution of the garnishment or lien is the sole responsibility of the contractor and the claimant.

A tax garnishment or lien is an obvious signal that the contractor may be suffering financial hardship. Administrators should act with caution and review the contractor's ability and/or willingness to continue to meet their contractual obligations. Program managers should be notified of the event.

D. **Public Relations:** It is not uncommon for a contractor to request permission to publicize the award of a contract. Caution must be exercised whenever such a request is received. The state does not endorse vendors. Contractors must submit an exact sample of the document they wish to circulate. This document must be reviewed by appropriate agency personnel to ensure that no state law is breached. An example of an acceptable press release is one which simply states that the contractor was awarded a contract for commodities or services by the state with the description of the commodities or services as well as the total value of the contract.

No letters of endorsement and/or testimonials for any materials, supplies, equipment, or contractual services which are purchased or used by the state shall be issued by a state agency. The use of the state seal is prohibited by anyone other than the State of Wisconsin.

E. **Specifications, Deviations and Exceptions, and Quality:** The administrator needs to verify throughout the life of the contract that the goods and services being provided by the contractor are the same as those which served as the basis for awarding the contract. The administrator should assure that any changes are accepted in writing.

F. **Quantities:** Minor adjustments in the quantities of items furnished or hours worked are acceptable. The administrator should guard against allowing significant changes that could have affected the outcome of either the contract award process or pricing structures offered by the bidders.

G. **Delivery:** The administrator is responsible for assuring that the agency doesn't pay excessive shipping charges for items ordered under the contract. Most purchase orders use the common terms "F.O.B. shipping point" or "F.O.B. destination." F.O.B. (free on board) means the seller is required to place the goods aboard the equipment of the transporting carrier without cost to the buyer. The stated f.o.b. point is the point where the ownership of the

goods transfers from the seller to the buyer. Usually, f.o.b. destination means that the seller pays the freight charges and owns the goods until they are formally received by the buyer. F.O.B. shipping point usually means the buyer owns the merchandise, and is billed separately for the shipping costs from the time the goods leave the seller's dock. Before authorizing any payments for shipping costs, the administrator should review the contract and verify the propriety of the invoice with the purchasing agent who wrote the bid.

H. **Pricing and Discount:** Market prices may fluctuate during the life of the contract. It is the administrator's responsibility to assure that contractor requests for increases are reasonable and warranted, and to assure that any discounts or savings to which the state may be entitled are taken. The key word is "reasonable," and there is no recipe for standards of reason. When costs shift in either direction, documentation of cause and outcome is essential. Sometimes the contract will reference a business index, such as the "Consumer Price Index," for use as a guide in determining the amount of an increase. As always, the administrator must check the contract carefully.

I. **Payment Terms and Invoicing:** The administrator must not delay the proper handling of vendor invoices or the agency may incur finance charges for late payments. If the goods and services ordered are delivered in unacceptable condition, or if the invoice is improperly submitted by the contractor, documentation of a "good faith dispute" must be prepared. The administrator should work directly with purchasing or with accounts payable staff to assure that the documentation is appropriate.

J. **Taxes:** State agencies are for the most part tax exempt, and exceptions to the exemption (i.e., beer, tobacco products, motor vehicle fuel) are clearly delineated on the purchase order. The administrator must advise the contractor as needed that the contractor's invoices should not include sales taxes, and that the State will not pay the taxes if invoiced for them.

K. **Guaranteed Delivery:** This clause provides the right to buy necessary items elsewhere when the contractor fails to deliver, and the right to bill the contractor for excess cost of those items plus administrative costs incurred while buying those items. Again, it is the elusive concept of "reasonableness" that governs the extent to which the administrator may want to charge the contractor for delivery problems. The administrator must ascertain whether or not the delivery problem was due to contractor malfeasance and, if so, does billing the contractor for extra cost deter future occurrences. The administrator should consult with the purchasing manager prior to taking action on this issue.

L. **Entire Agreement:** This clause basically means that if it isn't in writing, it doesn't exist. The emphasis is on the need for **written** agreements, and the protection of the clause is two-fold. It prevents the contractor from substituting terms and specifications not previously agreed to by the purchasing agency, and it forces both parties to agree in writing to any commitments negotiated after the contract is awarded.

M. **Applicable Law:** When the contractor says "it's the law," the administrator must be sure that both parties know they are bound by Wisconsin law and not the laws of the contractor's state.

N. **Assignment:** This refers to transference of a property right or title to another party. The contractor, who by definition has a property interest in its contract with the state, cannot transfer that interest to another party without the written approval of the state. The contractor cannot sell the state's contract to another vendor. If the contract is with Smith and he sells his company to Jones, the state is not automatically locked into a contract with Jones. Similarly, Smith cannot sell any part of the contract to Jones without the state's approval. The state is under no obligation to have Jones do any of the work specified in the contract with Smith.

O. **Sheltered Work Center Criteria:** If the contract is with a sheltered work center (SWC), the administrator needs to review the state policy governing relationships with the work centers. It requires, for example, that "every effort to negotiate adjustments will be made before canceling the order." The State Use Board must approve agency requests to cancel contracts with SWCs, and that may entail a 60 day delay.

P. **Warranty:** The administrator must know the length of the warranty specified in the contract. The state's minimum warranty period of 90 days applies if the contract does not offer a different term. The administrator should keep this in mind to avoid paying maintenance or repair costs for an item under warranty.

Q. **Cancellation:** Canceling a contract for nonappropriation of funds is usually a lesser problem than canceling for noncompliance. In either case, cancellation or termination is a last resort that should not be undertaken unilaterally by the contract administrator. The administrator must prove that the contractor is "guilty" and that the contract should be ended, so once again documentation is the key ingredient.

R. **Proprietary Information:** This clause cautions both the contractor and the contract administrator to maintain the confidentiality of properly claimed proprietary information. It is a reflection of public records law, and it recognizes the limits placed by the law upon one's access to a

contractor's trade secrets. It also restricts the contractor's options to copyright or patent the work that results from state contracts. If asked, the administrator should not approve a contractor's request to copyright its work done under contract with the state. The administrator must also monitor the contractor's access to, and use of, other types of confidential information during the contract period. Medical records, personal client information, and other personal information must be protected.

III. Performance Management

A. Documentation: Documentation is vital to managing a contract since it provides the history of the contract. If there is a performance dispute between the contractor and the state, documentation will establish the facts and will probably determine the outcome. Documentation can help protect the administrator from contractor claims. If there is a need to assess liquidated damages (see section III.E.) or to terminate a contract for breach, the documentation will provide the basis to do so.

The following are items that should be kept in the contract file:

1. Copy of the contract and any cost data
2. Copies of any amendments to the contract (original to official contract file)
3. Copies of written correspondence from both parties.
4. Notes from meetings - specifically on items contract administrator has agreed to do
5. Notes on phone conversations that affect the contract
6. Records of progress or deliveries
7. Copies of invoices
8. For a specific problem a log sheet which identifies the problem, attempted solutions and the results

B. Delivery/Inspection/Acceptance Testing/Review and Approval: At the start of the contract the administrator should develop a schedule of service delivery in accordance with the terms of the contract. If the contract is for a commodity an inspection will take place upon delivery of the item. The item should be examined carefully before determining whether or not to accept.

If the contract is for the development of a product (e.g. software program) a schedule of reviews should be established. If accepting hardware or software an acceptance period should have been set in the contract (e.g. hardware/software operates without failure for 98% of the time for 90 consecutive days).

If the contract is for a service, there should be random checks to ensure that service is being provided within the terms of the contract and that the contractor is in compliance with any applicable quality assurance plans..

C. **On-Site Responsibilities of the Contractor:** The Contractor is responsible for the conduct, safety and appearance of its employees. The following are a number of areas the administrator should be aware of:

1. The Contractor's employees conduct should be appropriate to the service being provided. The administrator should check the contract to see if this is spelled out. If a Contractor's employee is behaving in an inappropriate manner the administrator should report it immediately to the Contractor's project manager.

2. The administrator should ensure that the Contractor performs any required security checks and should advise the Contractor of standard security procedures at the facility.

3. If there is a dress code for the Contractor it should be spelled out in the contract.

4. The Contractor is responsible for meeting all safety requirements established by Federal, State, and local laws and regulations.

5. The Contractor is responsible for the Americans with Disabilities Act requirements. The State will provide reasonable public access to State buildings, but accommodations for Contractor employees to perform contracted tasks are the contractor's responsibility.

6. The Contractor should have employees sign a non-disclosure document if they are handling Confidential Information. Procedures for handling Confidential Information should be established in the contract.

7. If the Contractor is allowed access to state equipment (e.g. phones, Faxes) the charges for access should be spelled out in the contract. Contractors are not permitted to use state cars.

D. **Disputes & Remedies:** The Contractor must be notified immediately if services are not performed or items are not delivered in accordance with the terms of the contract. The problem and the attempted solution must be documented. If the contractor does not fix the problem the documentation will be the basis for pursuing termination of the contract.

The administrator must ask the Contractor for revised performance dates or a plan to resolve problems. The administrator may ask the Contractor for

consideration (i.e. what the contractor will give the state of value because he/she failed to perform as required). Consideration may have already been established in the contract as liquidated damages.

If the Contractor is unable or unwilling to correct any problems the Purchasing Authority may consider terminating the contract for breach.

E. **Liquidated Damages:** If the Contractor is not performing per the requirements of the contract, the contract may have established damages that can be given to the state. A Liquidated Damage is a certain cost the State would incur if the contractor does not perform on time or in accordance with specifications. The administrator must document performance problems in order to assess liquidated damages and calculate the cost to the state for contractor non-performance. Calculation of the cost must be based on actual cost to the State and must be realistic.

F. **Reporting Relationships:** Creating an employer/employee relationship with a Contractor creates liability for the state. The administrator must avoid creating this relationship. If the relationship is established the state may be required to pay full benefits to a Contractor employee.

To avoid creating an employer/employee relationship watch out for:

1.The degree of control exercised over work performed. The administrator should only tell a Contractor what is the desired end result of a project and when deliverables are due. It is the Contractor's responsibility to decide HOW to do the work to meet those due dates. The administrator must avoid day-to-day supervision of a Contractor.

2. If a number of Contractor employees are on site, the administrator should deal only with the project manager and should not direct Contractor employees. In addition no other state employees should be directing the Contractor or its employees. Only the administrator and any delegated people shall give direction.

3. In meetings with the public, contractors should identify themselves as such and not as employees of the state.

4. Work areas for Contractors should be identified as such.

G. **Audits:** The administrator has an obligation to ensure any audits called for in the contract are done on schedule.

H. **Contract Amendments:** Only an authorized agent of the state may issue ` an amendment. The administrator may not be authorized to make any changes to the specifications or terms of the contract unless he or she has delegation from the Procurement Authority. When an amendment is issued it can not significantly change the scope or intent of the original bid or RFP. Administrators should consult with the Procurement Office to check this.

Any verbal negotiations that modify the contract must be followed up in writing by the issuing an amendment that is signed by the State and the Contractor. Without an amendment the modification of work could be considered an illegal contract.

I. **Contract Option Renewal/Negotiations:** Contracts often provide options to extend the term of the contract. Contract extensions must be mutually agreed to by the Contractor and the State. A letter to request that an option be exercised is issued (this letter is not a contract agreement). The contractor will decide whether to make an offer and the administrator, after consulting with management and purchasing, will decide whether to accept the offer.

J. **Subcontractors:** The state has privity of contract (i.e. the legal right to deal with) only with the Prime Contractor. In turn only the Prime has privity of contract with any subcontractors. The state is not allowed to direct a subcontractor since there is no legal relationship between them.

A subcontractor is subject to all the terms and conditions of the contract. The Prime is responsible for ensuring the subcontractor performs in accordance with these conditions. If there is a problem with a subcontractor's performance the administrator must contact the Prime to correct problems. If a subcontractor is a minority business certified by the state, the administrator should notify the State Minority Business Coordinator, State Bureau of Procurement, of any problems.

A State employee should not recommend or encourage a Prime vendor to subcontract with a particular firm. The RFB/RFP should always have a requirement for vendors to disclose their subcontractors in their response, with their acceptance subject to State approval.

K. **Payment**: Contract Administrators are responsible for reviewing contractor invoices. The contractor should submit an itemized invoice. If there isn't enough detail to determine if they have delivered services, return the invoice to the contractor and request additional detail. Items that should be reviewed for commodity contracts include the price, number of items ordered and received, and shipping charges (was shipping included in the original price?). If the invoice is for a service contract the administrator should match up the

number of hours invoiced against contractor time sheets. The administrator should also review any equipment or materials charges. If the contractor has delivered only part of the service or product the administrator can partially pay the invoice after checking with accounting to see how to do this. The full amount should not be paid, because this leaves no incentive for the contractor to complete the work.

IV. Ethics in Contract Management

A. Standards of Conduct: Contract administrators must not only comply with all procurement laws but must fulfill their responsibilities in keeping with the highest moral, legal and ethical standards. Being ethical, in this context, means conforming to accepted professional standards of conduct. **The intent of these standards is to avoid not only impropriety but even the appearance of impropriety.** In the context of contract administration, impropriety includes anything that could expressly or implicitly show favorable treatment toward a vendor. The rules underlying standards of conduct for Wisconsin classified employees are found in the Wisconsin Administrative Code. Similar provisions for unclassified employees are administered by the State Ethics Board.

1. Administrative Code: *1ER-Pers 24.04 (2) The state must, by necessity, specifically prohibit those activities that will cause a conflict of interest to the employee or to the state of Wisconsin. Therefore:*

(a) No employee may use or attempt to use his or her public position or state property, including property leased by this state, or use the prestige or influence of a state position to influence or gain financial or other benefits, advantages or privileges for the private benefit of the employee, the employee's immediate family or an organization with which the employee is associated."

(b) No employee may solicit or accept from any person or organization, directly or indirectly, money or anything of value if it could reasonably be expected to influence such employee's official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the employee.

2. Standards for Contract Administrators: While the Administrative Code defines the standards narrowly in terms of conflict of interest, in the context of procurement and contract administration they must take on broader scope and definition. Contract administrators, therefore, must keep the following terms in mind in all their dealings with vendors.

Benefit: Contract administrators must make every effort to avoid even the appearance of reaping financial benefit or any other personal advantage from the contractual relationship.

Reasonable: Reasonable is open to interpretation by any observer. These include other vendors, taxpayers, the media, legislators, your peers, employees or management. What you may consider acceptable may be unacceptable to any of these groups. Therefore, the only standard to adhere to is to avoid even the perception of accepting something of value.

Perception: Social interaction with vendors should be considered carefully. Even when you are paying your own way, the propriety of being seen in a social setting with a vendor may be questioned. Others may perceive differently. Ask yourself: How will it look in the newspapers? To another vendor? To anyone?

Implied endorsement: Promotional items from vendors also are problematic. If an advertising promotion such as a coffee mug comes to you through your position, do not accept it. You will be perceived to be endorsing a vendor's product or service.

Fairness: This is one of the fundamental principles of public purchasing and the reason these standards of conduct are critical. Contract administrators must not do anything that may give the appearance of favoritism to one vendor over another. Vendors are usually very understanding, appreciate being informed of the policy, and will respect you for your integrity.

B. **Testimonials/Endorsements:** The State Bureau of Procurement has a policy that prohibits all state agency purchasing officers from issuing letters of endorsement and/or testimonials for any materials, supplies, equipment or services that are purchased and used by any state agency. By extension, this applies to contract administrators and anyone involved in the contractual relationship with a vendor. This policy applies also to videos and any other medium.

Contract administrators also have a responsibility to monitor vendor promotional materials for violations of the policy prohibiting advertising related to state contracts. (See Standard Terms and Conditions.) In addition, the Secretary of State has a policy prohibiting any entity except the State of Wisconsin from using the State Seal.

These prohibitions, however, do not extend to references. When asked, administrators may respond to straightforward reference checks with statements regarding the contractual relationship and whether performance was satisfactory or not.

C. **Copyright Protection:** The contract administrator must protect all copyrighted and/or licensed materials provided by the contractor. This includes translations, compilations, modifications, updates and partial copies if the original material is the exclusive property of the contractor. The contract administrator must ensure that the copyright notice is included on any copies made, in accordance with copyright instructions provided by the vendor.

Post Award Conference Checklist

The following items should be included in the initial meeting with the contractor:

1. Introductions and role definitions, including contract administrator, purchasing agent, and contractor's representative.

2. Review of specifications and terms and conditions.

3. Review and understanding of the work schedule, and discussion of contingencies in the event of disruptions in the formal work schedule.

4. Review of on-site accommodations required by contractor staff.

5. Outline of invoice and payment procedures.

6. Review and confirmation of specification changes that may have been negotiated subsequent to contract award.

7. Review of approvals required and procedures for change orders as needed.

8. Identification of security requirements and accomodations for tools, equipment, paperwork, etc.

9. Identification of subcontractors.

10. Establishment of documentation and reporting requirements during the life of the contract.

11. Procedures for dispute resolution.

12. Review of "enforcement" requirements, i.e., AA plan, insurance, OSHA mandates, recycling.

13. Discussions of contractor prohibitions, including promotional advertising, news releases, disclosure of confidential or proprietary information, etc.

14. Procedures for cancellation/termination.