

CONTRACTING FOR SERVICES

This tool provides an overview of the components of a contract. If your ECI area board currently uses contracts to purchase services, use this tool as a guide to evaluate the essential components of a contract. If your board has never used contracts to purchase services, the tool provides information about the key components of a contract that will help your board develop a contract.

There are two contract templates available on the Early Childhood Iowa website that you may use and adapt for the services that you contract for. These templates contain all essential components of a contract. One contract template is for contracts under \$1,000.00 and the other template is for contracts \$1,000.00 or more.

http://www.empowerment.state.ia.us/files/resource_links/shortformcontracttemplate509.pdf

http://www.empowerment.state.ia.us/files/resource_links/localempcontracttemplate8-08.pdf

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WHAT IS A CONTRACT?

A contract is a legally binding agreement that creates an obligation between two or more parties. To protect the interests and investments of the board, contracts should be formal, written documents.

An effective contract:

1. Protects the interests of the board
2. Identifies responsibilities of the parties to the contract (the board and business/agency/organization)
3. Defines what the business/agency/organization must deliver
4. Documents the mutual agreement and parameters of what was agreed upon

A contract should:

- Clearly state and define the scope of work, contract terms, allowable renewals and procedures for any changes.
- Provide specific measurable deliverables and reporting requirements, including due dates.
- Describe the methods of payment and payment schedules.
- Limit the board's liability for work performed either before or after the contract's scope.
- Contain performance standards, performance incentives and/or clear penalties and corrective actions for non-performance, with a dispute resolution process. The contract should also include a requirement for a performance bond, when appropriate.
- Contain monitoring and audit provisions.
- Include provisions for contract termination.
- Include provisions for contract renegotiation and/or price escalations, if applicable.
- Tie payments to the acceptance of deliverables or the final product, if possible.
- Contain all standard or required clauses that were in the request for proposal (RFP). The contract may also incorporate the RFP itself. If you incorporate the RFP into the contract, describe the order of precedence in case of a discrepancy between the RFP and the body of the contract. More information about the order of precedence is later in this tool.
- Contain appropriate signatures, approvals, acknowledgements, or witnesses.
- As necessary, allow for legal counsel's review of the legal requirements for forming the contract, which may include a review of the contracting process; legal sufficiency of the contract; the contract terms; etc.

For ECIA boards, there are three basic components of a contract.

- **Offer:** Defines the terms and conditions of the contract
- **Acceptance:** Agreement to the terms and conditions of the offer
- **Consideration:** Defines what the parties have bargained for, the board usually provides money and the contractor provides services or goods

PROVISIONS IN THE CONTRACT

Provisions in the contract are sections that describe the obligations of each party. The provisions are also referred to as the contract “terms and conditions.” If you used a request for proposal (RFP) process to select a contractor, you can use several sections from the RFP in the contract if the sections in the RFP are clear and understandable.

IDENTITY OF THE PARTIES

In the contract, use the full legal name of your board and the business/agency/organization that you are entering into the contract with. In situations where there is a legal dispute, it is very important that the names of the parties are correctly identified in the contract. The Iowa Secretary of State’s website is a good resource to verify a business/agency/organization’s legal name. On the SOC’s website, select *Search Databases*, then *Iowa Corporations* to enter the entity’s name. <http://www.sos.state.ia.us/>

If a “corporate” entity (a corporation, nonprofit agency, LLC, LLP, or PLC that is required to be filed with the Iowa Secretary of State “corporation” registry) has a registered “doing business as” (dba) or fictitious name that is different than their legal name, (Example: ABC Children's Center (dba ABC Kids Place)), the dba name must be registered as a fictitious name with the Iowa Secretary of State to identify the dba name in the contract. If the dba name is not registered, do not identify the dba name in the contract.

In this section, state your board’s name and the contractor’s full legal name and address. You may also include other identifying information, such as, telephone number, fax number and email address.

DURATION OF THE CONTRACT

The duration indicates the length of the contract, starting and ending dates. When designing the contract, your board may want the duration of the contract be one (1) year and then build in contract renewal options for up to three (3) years. The contractor’s performance is one measure to consider when determining whether to renew the contract in subsequent years.

Verify that the contract duration and renewal options are consistent with the duration identified in the RFP.

SCOPE OF WORK

The scope of work is the single most important section of the contract. This section documents the:

- Components of the work
- Magnitude of the project
- Mutual understanding of the parties

There are two core items involved in writing the scope of work. First, you must have a good understanding of what it is that you want to buy. Second, you must have good writing skills.

The scope of work is a detailed description of the expectations of the contract. If you do not have the expectation described in the scope of work, you cannot hold the contractor accountable for meeting that expectation.

Note: If you used an RFP process to select a contractor, verify that the scope of work is consistent with the project and services described in the RFP.

The chart below asks questions to help you identify what it is you want to buy.

Aspect the Contract will Address	Contract Expectations	List the expectation specific to the contract you are developing
Inputs		
Problem/issue to be addressed	What is the problem you are trying to solve or issue being addressed? How will you know that the problem is solved or the issue resolved satisfactorily? What do you want to see accomplished?	
Characteristics of the entity/ persons to be served	Who has the problem or issue? Who is expected to be served under the contract? What are their characteristics, such as geographic location, income level, etc.?	
Staff characteristics	What types of staff will the contract require? (qualifications, availability, etc.)	
Facilities & equipment	What facilities and equipment will be required or expected? Are there specific requirements the facilities or equipment must meet?	
Throughputs		
Definition of service	What types of services will the contract require?	
Tasks	What service tasks must the contractor perform?	
Method of delivery	Are there expectations for how the tasks must be carried out? What expectations does the board have about how, when, where, who, how often, and what? If so, what are those expectations?	
Outputs		
Service completion	How will you know the contractor provided the service and completed the required tasks? Will payments be tied to outputs? Are there reports or meetings you expect? If so, at what intervals? What are the	

	expectations for those reports or meetings?	
Outcomes		
Definition of the change or result you want to achieve	What are the expected outcomes? How will you know when these outcomes have been achieved, e.g., what are the indicators? How will you measure the change? What data will you need and what are the sources of the data? Will payment be tied to outcomes?	

There may be circumstances when you must end the contract or not renew it and the board contracts with another service provider for the same services. It is important that the scope of work identifies the process for closing out the contract. For example, reports that the contractor must provide, records for customers/clients, all contract requirements delivered and accepted, final payment made and all invoices received, all monitoring issues resolved, all property inventory and ownership issues resolved (including disposition of any equipment and licenses), etc.

The second core item in developing a good scope of work is writing skills. Following are some general tips for writing a good scope of work:

- **Hold the contractor accountable.** The contract should hold the contractor accountable for results. Results or performance should be the focus, not procedure or process. Work requirements should be written in a results-oriented manner and clearly define all performance objectives, work expectations and project milestones so that you can verify that you received the services or results you are buying. Results may include reports, training sessions, assessments, evaluations or other tangible services.
- **Be precise.** The more precise you are in the scope of work, the more likely the contractor will satisfy its need. Write performance requirements that can easily determine if and when the contractor successfully completed performance.
- **Use active voice and task-oriented statements.** The clearest way to indicate who is responsible for the work is to use active voice. The table below provides examples of “active” verses “passive” voice.

Passive Voice	Active Voice
A minimum of one home visit each month with each family must be completed.	<i>ABC Parenting Program</i> shall complete a minimum of one home visit each month with each family enrolled in the program.
Quarterly reports must be submitted to the LMN Board quarterly based on the following reporting schedule.	<i>ABC Parenting Program</i> must submit quarterly reports to the LMN Board based on the following reporting schedule.

- **Avoid abbreviations and acronyms.** To prevent misunderstandings, avoid using abbreviations and acronyms as much as possible. If you do use abbreviations and acronyms, define them, either in the definition section of the contract or the first time you use the abbreviation or acronym in the contract.
- **Avoid using ambiguous words and phrases.** The following table provides examples of ambiguous verses clearly defined performance expectations.

Ambiguous Performance Expectation	Clear Performance Expectation
Clear the snow as required	<i>DRIFT Removal</i> shall keep driveways clear of snow so that the depth does not exceed two inches.
Mow grass as necessary	<i>Yard Goat</i> shall maintain grass between two and three inches high.

- **Use consistent terminology.** Use the same word when referring to the same thing throughout the scope of work.
- **State due dates.** State due dates for formal written reports, as well as, any timelines for required oral progress reports or other service deadlines. Also, include contract monitoring requirements. For example, schedule regular meetings to review standards, evaluate progress, and identify problem areas and determine necessary actions by each party to resolve the problems.
- **Number the pages.** Number the pages of the contract to make it easier to reference specific sections when discussing the contract with board members or the contractor. It is also easier to re-assemble the contract if the contract pages get out of order.

The following resource may help you strengthen your writing skills.

<http://www.plainlanguage.gov/howto/guidelines/reader-friendly.cfm>

As mentioned above, the scope of work describes what the board is purchasing. The scope of work also identifies how the board will measure whether the contractor met the expectations in the contract. Let’s take a closer look at performance criteria and performance measures.

PERFORMANCE CRITERIA

The scope of work clearly states the performance criteria the board expects the contractor to meet. The purpose of performance criteria is to provide a standard or measure for performance of contracted services. You also use performance criteria to determine if, and when, the contractor successfully completed performance, and when and how much to pay the contractor.

Contract performance criteria may:

- Define the standards for measuring contractor performance
- Provide a means to monitor performance
- Measure satisfaction with the contractor
- Provide data for program evaluation

When developing performance criteria, consider how the data is submitted, analyzed and maintained. Key questions to consider include:

- ✓ How much information can reasonably be requested, submitted and analyzed?
- ✓ How often and on what schedule must the contractor report the information?
- ✓ How will the contractor submit the information?
- ✓ Who will receive the information?
- ✓ How will the board provide feedback to the contractor?
- ✓ What is the cost and benefit of each proposed performance measure?

Characteristics of good performance criteria:

- Are easily understood by contractors, board members and the general public
- Focus on the performance expected from the contractor
- Are well-defined and consider both quantitative (how much? – inputs and outputs) and qualitative (how well? – quality/efficiency and outcomes) aspects of performance
- Include a well-defined method for reporting data
- Are relevant, timely and verifiable
- Are realistic in terms of available resources, funding and timelines, and recognize external factors beyond the control of the system

When considering the outcomes of a service or activity, ask the following questions:

- How will the board know the contractor actually provided the service (other than taking the contractor's word for it)?
- Is the board concerned about the quality of the service? If so, include a way for measuring quality.
- Does the board want a specific outcome?
- Is payment contingent on an event, product or outcome? If so, how will the board know that the contractor satisfied the requirement?

PERFORMANCE MEASURES

Performance measures are the measures that assess a service, product, or activity. Performance measures are quantifiable measures, which mean that the measures are **numeric**. Performance measures are performance criteria, but performance criteria are not necessarily performance measures. One difference between performance criteria and performance measures is that performance criteria is not always numeric.

There are four (4) categories of performance measures, inputs, outputs, quality/efficiency and outcomes.

- **Inputs.** Inputs measure *“how much service did we deliver.”* These measures describe the resources invested, used or spent for services, products or activities. (For example, staff and financial resources)
- **Outputs.** Outputs measure *“how much change for the better did we produce.”* These measures describe the number of services, products or activities produced or provided.
- **Quality/Efficiency.** Quality/Efficiency performance measures describe *“how well did we deliver service.”* Efficiency measures identify the unit cost or level of productivity associated with a given service, product

or activity. Quality measures are mathematical expressions of how well the service, product or activity was delivered, based on characteristics identified as being important to the customers served.

- **Outcomes.** Outcomes measure *“what quality of change for the better did we produce.”* When the contractor delivers programs/services directly to people, we look at whether the people are better off – skills, attitude, behavior and circumstance. Did their skills improve; did their attitude change for the better, did their behavior change for the better, is their life circumstance improved in some demonstrable way?

MONITORING AND REVIEW CLAUSES

Monitoring and review is a planned, ongoing or periodic activity that measures and ensures the contractor’s compliance with the terms, conditions, and requirements of the contract. For these clauses, identify who the review will involve, who will complete requests for additional information, the methods for completing the review (on-site, etc.), and the process for sharing the results of the review. Also, outline the process for resolving any problems identified and addressing deficiencies in the contractor’s ability to meet the expectations in the contract.

The “monitoring clause” describes how the board will oversee the contractor’s compliance with the contract. In this clause, identify the information and documents you will review and what you will be reviewing them for (for example, timeliness, completeness, etc.).

The “review clause” describes the methods the board will use to review the performance of the contract. The review clause for performance may include output measures, quality/efficiency measures and outcome measures.

PAYMENT CLAUSE

The “payment clause” describes the cost and payment. This may include the:

- Maximum contract cost
- Cost per deliverable
- Rates for individuals providing services
- Number of hours required
- Allowable expenses
- Total authorized for expenses and payment
- Payment being tied to the contractor’s performance (discussed more below)
- Invoicing procedures, e.g., frequency the contractor must bill for reimbursement, documentation necessary for the contractor to receive a payment, back-up documentation, etc.
- The maximum dollar amount allowed to be paid under the contract for expenses
- Board actions when the contractor fails to meet any reporting requirements

The payment for performance criterion outlines the consequences and remedy provisions for non-performance. Usually the remedy provisions escalate when the contractor is unable to correct the problem. For example, give the contractor “xx” days to correct the problem, withhold a % of the payments until the contractor corrects the problem, require the contractor to halt further performance until the contractor corrects the problem (board

does not incur any further payment obligations), and finally terminate the contract for the contractor's default on contractual provisions.

TERMINATION CLAUSE

The "termination clause" describes the terms for ending the contract earlier than the contract end date. This includes:

- A nonappropriation clause. This clause allows the board to terminate the contract if the Iowa Legislature does not appropriate funding to the board.
- A default clause. This clause allows the board to terminate the contract when there are performance compliance issues and the contractor has not made changes to remedy the problem within the timeframes identified.
- An immediate termination clause. This clause allows the board to terminate the contract when there is a serious problem associated to the contractor, such as, fraud, embezzlement, bankruptcy, suspension/debarment, etc.
- Termination upon notice clause. Allows the board to terminate the contract for any reason or no reason at all after the notice period (for example, 30 days). You may also want to include a termination upon notice by the contractor clause. In this clause, identify the method the contractor must use to provide notice to the board and the required length of the notice period.

INDEPENDENT CONTRACTOR

The independent contractor clause states that the contractor, its employees, agents and subcontractors are not employees or agents of the board for work performed under the contract. The clause also states that the board will not withhold state or federal taxes on behalf of the contractor.

CHOICE OF LAW

In the contract, identify that the contract is governed by Iowa law and the location where disputes will be litigated.

MODIFICATION LANGUAGE

This clause provides language to allow the contract to be amended as needed. In this clause, indicate the formal process in which the board and contractor must submit amendments and be approved by both parties.

OTHER CLAUSES AND CERTIFICATIONS

There may be additional clauses and certifications you must have in the contract based on the source of the funding. For example, for federal funding you must have certifications in the contract related to restrictions of lobbying efforts and unionization, suspension/debarment, compliance with the Pro-Children Act of 1994 prohibiting smoking, and Drug Free Workplace.

You may also need provisions related to:

- **Insurance requirements** – This provision protects the board from the contractor's negligence by requiring the contractor to purchase an insurance policy that covers the contractor's negligent acts.

- **Indemnification** – This provision protects the board from legal issues related to the contractor performing the contract. An indemnification clause is usually referred to as a “hold harmless clause” where the contractor takes the risk and offers the board legal protection from any action resulting from the signed contract.
- **Confidentiality** – This provision protects confidential information from disclosure by the contractor. (For example, personal information of customers/clients served by the program.)
- **Records retention and access** – This provision identifies how long the contractor must keep the records and who may have access to the records. The clause may also identify the method the contractor must use to store records (a secure area, such as, a locked file cabinet). Also indicate the appropriate disposal of confidential records when the record retention period is over.
- **Intellectual property** – This provision grants property rights to the board for anything developed using funds under the contract. Common types of intellectual property include copyrights, trademarks, patents, words, phrases, symbols, and designs.
- **Warranties** – Most warranty periods are for the duration of the contract.
- **Audits** – This provision identifies any single audit requirements, requires the contractor to notify the board when an audit is conducted and requires the contractor to submit the final audit report when there are any audit findings.
- **Severability** – This provision identifies that if a provision in the contract is determined to not apply for whatever reason, the rest of the contract is still enforceable.
- **Waiver** – The provision identifies that if one term of the contract is waived, the rest of the contract is still enforceable.
- **Force Majeure** – This provision provides agreement for what happens in the event of “acts of God” and things like that.
- **Repayment obligation** – This provision states that if any state or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of the funds, the contractor is liable to the board for the full amount of any claim disallowed and for all related penalties. The provision also states that it applies to the contractor as well as any subcontractors.
- **Third party contracts/subcontracts** – This provision addresses third party contracts and subcontracts. If the board used a formal process to select the contractor, the board may require the contractor to get expressed, written consent before subcontracting the work identified in the contract.
- **Entire understanding** – This provision is also known as a “merger clause,” which means that this contract and all its exhibits, attachments, etc. is the only contract that exists and nothing else can be included in this contract.
- **Order of precedence** – This provision identifies the priority of the different pieces of the contract when examined by a court. For example, the order of precedence may be special provisions, contract and then proposal.

SUSPENSION/DEBARMENT

Boards must not enter into a contract that is funded through federal dollars if the contractor is on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Check both databases below using the contractor name and any “dba” names the contractor uses. Print the results of your search and store it in the contract file. Periodically, check both databases during the contract period to verify that the contractor’s name

does not appear on either list. If the contractor's name appears on either list, work with your board to determine next steps.

If the board enters into a contract with a contractor that is on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, you risk federal recoupment of funds and penalties.

<http://www.oig.hhs.gov/fraud/exclusions.asp>

(The "Online Searchable Database" link is on the main page in the box called "Exclusions Program")

<https://www.epls.gov/>

(The searchable database window is on the left side of the page titled "Search – Current Exclusions")

SIGNATURES OF RESPONSIBLE PARTIES

Identify the signatures needed to execute the contract. Verify with the contractor who has the authority to sign the contract.

The signature block should not appear on a page all by itself. There should be a portion of the contract text at the top of the page. It is a good business practice to have the contractor sign the document before the board. This ensures that the contractor agrees to the terms of the contract and then the board responds with the approval signature. Only persons with the authority to bind the contract may sign the contract document. The contract is considered executed when all authorized parties have affixed their signature.

LEGAL REVIEW

Consult with an attorney to review the contract before you finalize it.

REFERENCES

Colorado Office of the State Controller. (July 2008) "How to Write a Contract Template."

"Federal Plain Language Guidelines." <http://www.plainlanguage.gov/howto/guidelines/reader-friendly.cfm>

Friedman, M. (2005) "Trying Hard Is Not Good Enough: How to Produce Measurable Improvements for Customers and Communities."

Iowa Department of Administrative Services. "Service Contracting Guide."

<http://das.gse.iowa.gov/procurement/scg.html>

Iowa Department of Human Services. "Standard Contract Template."

Lindgren, C. & Scrowther, D. (May 2009) "Developing a Request for Proposal."

http://www.empowerment.state.ia.us/files/resource_links/2009-May-Developing%20a%20Solid%20RFP.pdf