



Office of the
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BOARD OF SELECTMEN

POLICY #08-2019 Goods and Services Contracts

Introduction:

In order to be clear about the intent of both the Town and other parties with whom the Town enters into relationships, written contracts are frequently necessary. Well-executed written contracts clarify and define the agreement between the parties and protect against unnecessary risks to the Town's resources and reputation. This policy provides guidance for the development and use of written contracts, describes situations for which they are required, and identifies exceptions to those requirements. Any questions should be addressed to the town's Chief Procurement Officer.

Contract Definition:

Under this policy, a contract is an agreement between The Town and another party that is intended to have a binding obligation and/or legal effect. Contracts contain the terms and conditions under which goods, services, or other considerations of value are furnished by either party. Effective contracts provide a common understanding and the essential terms and mutual obligations defined within the agreement that exist between the parties. In addition to formal documents commonly understood to be contracts, documents such as purchase orders, service agreements, leases, and letters or memoranda of agreement, understanding, and intent are contracts if there is a Town interest at stake and something of value is exchanged.

Applicability of the Policy:

This policy applies to all agreements between The Town and any other party, for goods and services. This policy does not apply to employment contracts.

CONTRACT POLICY:

When Written Contracts Are Required and When Are They Not Required:

Not every arrangement involving the purchase of goods or services by the Town, or the use of Town facilities or resources by third parties, will require a written contract, but most do. In general, if the arrangement involves any significant risk or potential liability that needs to be allocated between the parties, or involves a situation where the duties and responsibilities of the parties are not so basic and obvious that they do not need to be spelled out in writing, then a contract should be used. In the following subsections, some common types or categories of commercial or business transactions are described, and situations requiring (or not requiring) a written contract are specified. Keep in mind that Contracts, when used, must be originated by the Town.

Contract Language:

Contract forms, templates and required language are stipulated in Contracting Procedures section of this policy, which may change from time to time. If the forms and templates provided do not seem appropriate for the transaction or arrangement being contemplated, or if such forms or templates are a good starting point but clearly need modification, you should consult as necessary with the Chief Procurement Officer or to define the proper language for your particular situation.

Contract Approval and Signatory Authority:

Signatory authority for The Town is sometimes delegated but contract approval authority and responsibility rests ultimately with the Board of Selectmen. Pursuant to town bylaw, contracts with a value of less than \$5,000.00 may be executed by the Town Administrator.

When the Board of Selectmen delegates its approval or signatory authority, the Board must still exercise reasonable oversight and maintain ultimate responsibility for the contracts, and the Board should limit or revoke the delegated authority whenever appropriate.

Legal Counsel Review:

Additional information on contract review is provided in Appendix A: Procedures.

Clauses not Permitted:

- *Automatic Renewal*: The Town does not allow contracts to contain an automatic renewal clause unless there is also a clause permitting the Town to terminate the contract at will.
- *Limitation of Liability*: The Town does not allow a contracting party to limit their potential liability except in rare or specific circumstances. Limiting this recovery could adversely impact the Town's insurance coverage.

Exceptions for State and Federal Agencies:

The Commonwealth of Massachusetts, the Federal Government and most states will not provide insurance or indemnity in their agreements with their contracting partners. In such instances, the Town normally will accept the agency's contract without such provisions. When entering into a contract with such a governmental entity, it is recommended that the contracting party attach the Town's standard addendum and any other desired language which may act as a guideline for the parties to follow in the event of an adverse event or outcome; however such attachment is not likely to be considered binding. Contracting departments also need to be very careful in considering whether or not the other party is truly a state agent or not – many state universities or colleges do not have the same immunity protections as other state agencies (e.g., the State Police), and some quasi-public entities may not be precluded from providing insurance or indemnification to other parties they do business with.

Whistle-blower:

If a person believes that a supervisor, colleague, subordinate or any other person is acting outside the Town policy on contracting, she/he should report the concerns utilizing the Town's anonymous Red Flag Reporting process.

Retaliation against any person who reports suspected or identified problems, malfeasance or other wrongdoing is prohibited by law and Town policy.

Conflicts of Interest:

It is the responsibility of all Town employees to ensure that the Town does not knowingly enter into contracts that present conflicts of interest. Town officials must accordingly exercise their authority in a manner consistent with applicable conflict-of-interest policies and laws.

Procedures:

The Town Contracting Procedures are included by reference in this Policy as Appendix A, however it is recognized that procedures may be changed more frequently than the Policy.

APPROVED BY THE TOWNSEND BOARD OF SELECTMEN

FIRST READING: October 1, 2019

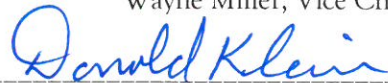
FINAL APPROVAL/ADOPTION: November 5, 2019



Sue Lisio, Chairman



Wayne Miller, Vice Chairman



Donald Klein, Clerk

APPENDIX A

CONTRACTING PROCEDURES

Contracting departments should refer to both Policy and Procedure when entering into and developing contracts and agreements.

This Procedures on Contracts and Contracting is designed to give departments and individuals the resources they may need regarding contracting.

Contract Initiation and Reviewer Responsibilities:

The individual initiating the contract on behalf of the Town (the initiator) and subsequent reviewers are responsible for reading the entire contract and determining that its content, objectives, definitions, and terms:

1. Accurately reflect the terms of the Town's solicitation and are consistent with the requirements of the Uniform Procurement Act.
2. Are consistent with the initiator's or department's requirements.
3. Utilize the Town's Counsel supplied standard terms and conditions (*see Forms*)
4. Are clear and consistent throughout.
5. Do not constitute a conflict of interest for the parties affected by the contract.
6. Are in accordance with Town Policies.
7. Are in accordance with state and federal laws as may be applicable.

In addition, contract initiators are responsible for ensuring that contracts:

Are routed through the appropriate Town officials for review once procured and contracted but prior to signing.

The appropriate steps are as follow:

1. Submit the draft contract to counsel's signature of approval.
2. Submit the draft contract to the Town Accountant for signature attesting to the availability of funds to meet the terms of the contract, and lastly
3. Submit to the Board of Selectmen for vote and execution at a public Board of Selectmen meeting.

Are appropriately filed and stored.

Contract Signer Responsibilities:

All contracts must be signed by both parties.

The contract signer is responsible for 1) reviewing and signing the contract, 2) ensuring that all mandatory reviews have been done, and 3) sending the signed original contract to the responsible office for storage and management.

Managing the Contract:

All contracts should be assigned to a contract administrator, who may or may not be the contract initiator or the signature authority. The contract administrator is the administrator responsible for performing or tracking the performance of the contract and addressing any other issues that arise under the contract.

All contract files must contain:

- A copy of the final, fully-executed contract.
- All correspondence or other documents related to the contract. If there are performance problems with the contract, the problems should be documented in memos to the file or in correspondence to the vendor.
- All changes (including change orders and work orders) to the agreement should be formally executed in accordance with the terms of the contract and attached to the Agreement.
- Any extensions to the agreement should be formally executed in accordance with the terms of the agreement and attached to the Agreement.
- All certificates of insurance should be kept in the file.
- A diary or tickler "compliance" file should be established to keep all certificates of insurance up to date, verify timely performance if time is of essence to the agreement, and to allow timely renewal, if applicable, of the agreement.

At the conclusion of the term of the contract, the administrator responsible for managing the contract is responsible to close the agreement and ensure that it is properly stored, as outlined below.

IRS Form W-9:

The federal government requires that the Town obtain an IRS Form W-9 from all parties to whom it may issue a check. Our contracts should reflect this requirement. The IRS Form W-9 contains Personal Identifiable Information (PII) and must not be copied or kept by the department issuing the contract. The best practice is to include the IRS Form W-9 with the contract, including a stamped and addressed envelope to:

Accounts Payable
Town of Townsend
Town Hall
272 Main Street
Townsend MA 01469

If the contract is signed on Town premises, the department issuing the contract can collect a copy of the W-9 at the time the contract is signed, and hand deliver it to Accounts Payable. This information is kept on

file so that it is available for reference when the check request or invoice is presented for payment. W-9 forms are kept for two years from the date of receipt by Accounts Payable.

Completed Agreements – Storage:

The Town Accountant's Office is the official repository for executed contracts. Copies of the contract, once fully executed, should also be kept in the Contract Administrator's department level contract file.

Getting Help:

Who do I call for general information about forming or managing a contract?

Consult this policy and the Chief Procurement officer, for template forms, contract structure, risk issues, insurance and indemnity agreements, professional services,

Template Forms and Language:

Template forms and language, as may be amended from time to time by Town Counsel, are provided for risk management purposes only and should not be construed as legal advice. Forms listed below are for the convenience and utility of The Town staff who may need to construct an agreement.

Using template forms:

Select the type of agreement that most closely matches the subject of your agreement (e.g., goods and services, real property, construction, waiver of liability). Download the word.doc file and save it to your computer, renaming it appropriately. Fill-in the blanks and adjust the agreement to meet the terms and conditions of your specific agreement. If you have questions, contact the Chief Procurement Officer for assistance. Templates have the minimum clauses needed for a clear agreement, but many agreements may need additional clauses to complete the agreement.

Template Form:

All template contracts can be obtained by contacting the Board of Selectmen's office.

Acknowledgement of Receipt of Policy

I acknowledge receipt of this Goods and Services Contracts Policy. Having read said policy, I understand and agree to its terms.

Name (Print)

Signature

Date

