**Instructions**

1. General
   1. Use this checklist to help evaluate unresolved contractor performance issues and to consider possible contract termination; to help notify your constituents and stakeholders of the facts involved in the aforementioned evaluation and consideration; and to help document those facts and progress due diligence efforts.
   2. Exercise reasonable caution when utilizing this checklist as it is not meant to be all-encompassing and it is not an exhaustive list.
   3. Add, change, or delete items in the checklist as appropriate to the specific contract under consideration. This checklist is meant only to provide a starting point and some guidelines.
   4. Notify the stakeholders, your contract professional, and legal staff before embarking on a full-fledged effort as they may be considering similar or alternative efforts.
   5. Note that any quantifying of pros and cons from the checklist must be carefully evaluated against the professional opinions of all related constituents as the determination of terminating a contract cannot be merely mathematical.
   6. Identify the associated risks and losses carefully and fully informal constituents of the same.
   7. Document the documents and communications carefully.
2. Notes
   1. Codes:
      1. F = Federal
      2. S = State
   2. Responses:
      1. Y = Checked and applies
      2. N = Checked and does not apply
      3. NA = not applicable to this contract
   3. Comment = notes (example: see attached contract; historical documentation/photos; etc.)
3. Documentation
   1. Note all contract terminations, and all other records pertinent to a local, state, and federal award shall be retained for a period of at least \_\_\_\_\_ years from the date of execution of contract termination.
4. Revisions
   1. **19-07-25.** Finalized original form.
   2. **19-08-19.** Revised form to include Revisions subsection and make minor formatting changes to form.

**Contract Termination Checklist Form  
for Convenience**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Description** | Req’d | Findings | | |  |
| # | Requirement | F/S | Y | N | NA | Comment |
|  | **The Contract** | | | | | |
|  | **Termination Language: Default/Convenience**  Reviewed by legal within the past calendar year |  |  |  |  |  |
|  | **Termination Language: Default/Convenience**  Included in the contract |  |  |  |  |  |
|  | **Factors** | | | | | |
|  | **Funds are Unavailable** Verify if not appropriated. |  |  |  |  |  |
|  | **Services No Longer Needed** Verify that program or services discontinued. |  |  |  |  |  |
|  | **Quantity Reduced** Verify significant quantity reductions vs as-needed |  |  |  |  |  |
|  | **Changes Exceed Contractors Abilities** Obtain written confirmation from Contractor. |  |  |  |  |  |
|  | **Radical Increase in Scope** Verify scope has exceeded the contract scope. |  |  |  |  |  |
|  | **Impossibility of Performance** Verify program or services cannot be performed. |  |  |  |  |  |
|  | **Complete or Partial Termination** | | | | | |
|  | **Both Parties Have Failed to Perform** Agree mutually to terminate contract. |  |  |  |  |  |
|  | **Conversion from Improper Termination for Default** Check with legal. |  |  |  |  |  |
|  | **Cancel award Pursuant to Successful Protest** Check with legal. |  |  |  |  |  |
|  | **Authority** | | | | | |
|  | **Documents**  Site Code, Ordinance, Law, Policy/Procedure. |  |  |  |  |  |
|  | **Persons**  Agent, Attorney, Head who legal authority |  |  |  |  |  |
|  | **Parties (interested in termination)** | | | | | |
|  | **Customer**  List requestor who requires service. |  |  |  |  |  |
|  | **Contractor**  List prime contractor. |  |  |  |  |  |
|  | **SubContractors**  List all subcontractor who might have an interest. |  |  |  |  |  |
|  | **Guarantor, Assignee, Surety**  List agents who may need to be involved. |  |  |  |  |  |
|  | **Costs** | | | | | |
|  | **Compensation for actual performance**  Defined detailed costs. |  |  |  |  |  |
|  | **Profit on work performed (not anticipatory)**  Defined detailed costs. |  |  |  |  |  |
|  | **Inventory**  Defined detailed costs. |  |  |  |  |  |
|  | **Subcontractor settlement costs**  Defined detailed costs. |  |  |  |  |  |
|  | **Settlement proposal preparation costs**  Defined detailed costs. |  |  |  |  |  |
|  | **Pay or Be Paid** | | | | | |
|  | **Pay Costs Associated w/Contract Termination** Determine any applicable reasonable costs. |  |  |  |  |  |
|  | **Collect Debt Associated w/Contract Termination** Determine any contractor is to pay Agency for reasonable costs. |  |  |  |  |  |
|  | **Post-Termination Actions** | | | | | |
|  | **Document**  Document for current and for future actions. |  |  |  |  |  |
|  | **Revise Policies and Procedures**  Revisit and revise to provide more informed guidelines |  |  |  |  |  |
|  | **Post-Termination Actions** | | | | | |
|  | **Re-procure as Appropriate**  Check with legal. Determine if and when this is appropriate. |  |  |  |  |  |
|  | **Instrument** | | | | | |
|  | **Contract Amendment**  Check with legal. Determine if appropriate. |  |  |  |  |  |
|  | **Change Notice to Purchase Order**  Check with legal. Determine if appropriate. |  |  |  |  |  |
|  | **Separate Negotiated Settlement Agreement**  Check with legal. Determine if appropriate. |  |  |  |  |  |

**Contract Termination Checklist Form  
for Cause**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Description** | Req’d | Findings | | |  |
| # | Requirement | F/S | Y | N | NA | Comment |
|  | **The Contract** | | | | | |
|  | **Termination Language: Default/Convenience**  Reviewed by legal within the past calendar year |  |  |  |  |  |
|  | **Termination Language: Default/Convenience**  Included in the contract |  |  |  |  |  |
|  | **Indemnity and Insurance Language**  Reviewed by legal within the past calendar year |  |  |  |  |  |
|  | **Indemnity and Insurance Language**  Included in the contract |  |  |  |  |  |
|  | **Scope of Work/Services/Specifications**  Included in the contract Outlined; short, not buried in long descriptions |  |  |  |  |  |
|  | **Scope of Work/Services/Specifications**  Used as a checklist to verify contract performance |  |  |  |  |  |
|  | **Performance: Acceptance or Rejection**  Identified clearly in the contract |  |  |  |  |  |
|  | **Performance: Acceptance or Rejection**  Identified clearly in progress reports, invoices |  |  |  |  |  |
|  | **Liquidated Damages**  Identified clearly in contract: reasonable amounts |  |  |  |  |  |
|  | **Liquidated Damages**  Assessment is at Agency’s sole discretion |  |  |  |  |  |
|  | **Bonds: Language**  Included in the contract. Adequate coverage. |  |  |  |  |  |
|  | **Cure Remedy: Language**  Included in the contract |  |  |  |  |  |
|  | **Cure or Remedy: Notification Method**  Included in the contract |  |  |  |  |  |
|  | **Cure or Remedy: Contractor’s Duty**  Included in the contract |  |  |  |  |  |
|  | **Cure or Remedy: Timeframes**  Identified clearly in the contract |  |  |  |  |  |
|  | **Cure or Remedy: Corrective Action Plan**  Included in the contract & who is responsible |  |  |  |  |  |
|  | **Factors** | | | | | |
|  | **Refusal to perform** Document refusal to perform. |  |  |  |  |  |
|  | **Prohibited activity** Document illegal or breach of contract activity. |  |  |  |  |  |
|  | **Poor performance** Document performance issues. |  |  |  |  |  |
|  | **Noncompliance w/material contract term/condition** Document noncompliance issues. |  |  |  |  |  |
|  | **Abandonment of work** Document no shows and no assurances. |  |  |  |  |  |
|  | **Alternatives** | | | | | |
|  | **Continue**  Evaluate if continuing is the least painful action Revise delivery schedule Subcontract to other 3rd Party |  |  |  |  |  |
|  | **Change**  Determine if a change to the scope would suffice  Change requirements w/consideration |  |  |  |  |  |
|  | **Cancel**  Determine if you can simply cancel the contract  Cancel contract/PO |  |  |  |  |  |
|  | **Settle**  Determine if settling would suffice  Supplies/services can be obtained elsewhere  No cost cancellation acceptable to contractor  No outstanding obligations due to owner |  |  |  |  |  |
|  | **Complete or Partial Termination** | | | | | |
|  | **Cause** Check with legal. |  |  |  |  |  |
|  | **Default** Check with legal. |  |  |  |  |  |
|  | **Authority** | | | | | |
|  | **Documents**  Site Code, Ordinance, Law, Policy/Procedure. |  |  |  |  |  |
|  | **Persons**  List Agent, Attorney, Head who legal authority |  |  |  |  |  |
|  | **Parties (interested in termination)** | | | | | |
|  | **Customer**  List requestor who requires service. |  |  |  |  |  |
|  | **Contractor**  List prime contractor. |  |  |  |  |  |
|  | **SubContractors**  List all subcontractor who might have an interest. |  |  |  |  |  |
|  | **Guarantor, Assignee, Surety**  List agents who may need to be involved. |  |  |  |  |  |
|  | **Costs** | | | | | |
|  | **Compensation for actual performance**  Defined detailed costs. |  |  |  |  |  |
|  | **Profit on work performed (not anticipatory)**  Defined detailed costs. |  |  |  |  |  |
|  | **Inventory**  Defined detailed costs. |  |  |  |  |  |
|  | **Subcontractor settlement costs**  Defined detailed costs. |  |  |  |  |  |
|  | **Settlement proposal preparation costs**  Defined detailed costs. |  |  |  |  |  |
|  | **Confer with Constituents** | | | | | |
|  | **Roles** Defined roles: concurrence with constituents. |  |  |  |  |  |
|  | **Contract Termination Checklist**  Provided this checklist to constituents |  |  |  |  |  |
|  | **Feedback: Communications/Meetings**  Received feedback from constituents |  |  |  |  |  |
|  | **Corrective Action Plan** Concurred on CAP with constituents. |  |  |  |  |  |
|  | **Compliance or Safety** | | | | | |
|  | **Violations: Documentation/Photographs**  Made by inspectors |  |  |  |  |  |
|  | **Violations: Communications**  Made by staff or public |  |  |  |  |  |
|  | **Violations: Illegal/No Harm Done**  Laws broken, but no harm done |  |  |  |  |  |
|  | **Violations: Illegal/No Harm Done**  Laws broken, harm was done: life, limb, property |  |  |  |  |  |
|  | **Violations: Damages-Direct**  Violations resulted in direct damages to Agency |  |  |  |  |  |
|  | **Violations: Damages-In Direct**  Violations resulted in indirect damages to Agency |  |  |  |  |  |
|  | **Violations: Damages-In Direct**  Violations resulted in lawsuit against Agency |  |  |  |  |  |
|  | **Violations: License**  License not current/invalid classification |  |  |  |  |  |
|  | **Violations: Certifications**  Certifications not current/invalid classification |  |  |  |  |  |
|  | **Violations: Liquidated Damages**  Have assessed LDs consistently |  |  |  |  |  |
|  | **Scope of Work/Services/Specifications** | | | | | |
|  | **Performance: Documentation/Photographs**  Documented minor correctable deficiencies |  |  |  |  |  |
|  | **Performance: Documentation/Photographs**  Documented moderate correctable deficiencies |  |  |  |  |  |
|  | **Performance: Documentation/Photographs**  Documented major correctable deficiencies |  |  |  |  |  |
|  | **Caution!**  Be careful about giving too many directives as an employer/employee relationship may be perceived by contractor |  |  |  |  |  |
|  | **Documentation** | | | | | |
|  | **Verbal Communications**  Documented calls/meetings with dates/persons |  |  |  |  |  |
|  | **Written Communications**  Memorialized phone calls or meetings in writing Provided recap to contractor |  |  |  |  |  |
|  | **Photographs/Videos**  Documented deficiencies with visual evidence |  |  |  |  |  |
|  | **Consistent Communications**  Communicated consistently with contractor |  |  |  |  |  |
|  | **Cure or Remedy** | | | | | |
|  | **Delays**  Evaluate whether delays are reasonable and permissible, force majeure |  |  |  |  |  |
|  | **Quality**  Evaluate whether quality of work or specification are reasonable and permissible |  |  |  |  |  |
|  | **Violations: Liquidated Damages**  Have assessed LDs consistently |  |  |  |  |  |
|  | **Cure or Remedy: Notification-Initial**  Sent communications re: performance issues |  |  |  |  |  |
|  | **Cure or Remedy: Meeting**  Held a meeting re: performance issues |  |  |  |  |  |
|  | **Corrective Action Plan: Co-developed**  Co-developed an action plan with dated items |  |  |  |  |  |
|  | **Corrective Action Plan: Finalized**  Sent an action plan as follow-up to cure meeting. |  |  |  |  |  |
|  | **Corrective Action Plan: Follow-up** Followed-up on action plan progress |  |  |  |  |  |
|  | **Transfer of Responsibilities** Evaluated if staff or another contractor can assume some of the responsibilities. |  |  |  |  |  |
|  | **Transfer of Responsibilities** Evaluated if staff or another contractor can assume all of the responsibilities. |  |  |  |  |  |
|  | **Suspend Work** Evaluated suspending work to rectify deficiencies. |  |  |  |  |  |
|  | **Withhold Payment** Exercise caution. Agency has legal obligations. |  |  |  |  |  |
|  | **Prohibit Additional Costs**  Evaluate not allowing Contractor’s additional costs |  |  |  |  |  |
|  | **Bonds**  Determine if bonds are current and adequate. |  |  |  |  |  |
|  | **Pay or Be Paid** | | | | | |
|  | **Pay Costs Associated w/Contract Termination** Determine any applicable reasonable costs. |  |  |  |  |  |
|  | **Collect Debt Associated w/Contract Termination** Determine any contractor is to pay Agency for reasonable costs. |  |  |  |  |  |
|  | **Post-Termination Actions** | | | | | |
|  | **Suspend K**  Check with legal. Determine if appropriate  Grantor may require these actions |  |  |  |  |  |
|  | **Debar K**  Check with legal. Determine which actions are the most appropriate.  Grantor may require these actions |  |  |  |  |  |
|  | **Document**  Document for current and for future actions. |  |  |  |  |  |
|  | **Revise Policies and Procedures**  Revisit and revise to provide more informed guidelines |  |  |  |  |  |
|  | **Post-Termination Actions** | | | | | |
|  | **Re-procure as Appropriate**  Check with legal. Determine if and when this is appropriate. |  |  |  |  |  |
|  | **Instrument** | | | | | |
|  | **Contract Amendment**  Check with legal. Determine if appropriate. |  |  |  |  |  |
|  | **Change Notice to Purchase Order**  Check with legal. Determine if appropriate. |  |  |  |  |  |
|  | **Separate Negotiated Settlement Agreement**  Check with legal. Determine if appropriate. |  |  |  |  |  |