

# 2023 State Contracts Seminar

July 20, 2023



# INDIANA DEPARTMENT OF ADMINISTRATION

Commissioner Dr. Rebecca Holwerda

**L. Erin Kellam, Deputy Commissioner  
Procurement**

**Tammera Glickman, Deputy General Counsel**



**Provide service excellence and support** to our partner agencies by:

Ensuring **effective** and **efficient management** of state resources

While providing **transparency** and **accountability** to Hoosiers



*Our*  
**Mission**







**Accountability  
Ethics  
Impartiality  
Professionalism  
Service  
Transparency**



*Our*  
**Guiding  
Principles**



# IDOA's Duties IC 4-13-1-4



## PUBLIC WORKS

Inspect/regulate power, heating, lighting plants owned by state agencies



## PROCUREMENT CONTRACTS

Copying, printing, mailing services

Travel Services

State Credit Cards



## FLEET TRAVEL



DCS Ombudsman

IDOC Ombudsman

Code Admin



## Property management

Leases

Rent out state property

-

real & personal

Surplus property

# Procurement & Contracts

*Where do I start?*

Procurement Training & Resources

<https://www.in.gov/idoa/procurement/procurement-training/>

Delegation of Purchasing Authority Program (DPAP) Manual

<https://www.in.gov/idoa/procurement/procurement-training/delegation-of-purchasing-authority-program>

***Stay informed... sign up for SCM Newsflash updates***

[SCMNewsflashSubscrip@idoa.IN.gov](mailto:SCMNewsflashSubscrip@idoa.IN.gov)



# Procurement

**Can I just purchase whatever my agency needs?**

IDOA is the official procurement agent for all executive branch agencies. IC 5-22-4-1

State agencies have delegated procurement authority under specific dollar amounts.

Any amount over agency delegation - IDOA Procurement Division is responsible for the bidding process.



# Procurement

## Procurement Methods:

<https://www.in.gov/idoa/procurement/how-to-build-a-request-for-proposal-rfp/solicitation-methods/>

- IC 5-22-7 Competitive Bidding
- IC 5-22-7.3 Negotiated Bidding
- IC 5-22-9 Request for Proposals
- IC 5-22-10 Special Purchasing Methods





# Request for Proposal (RFP) Process

## What is an RFP?

- *Primarily used for contracts above \$75,000*
- *Entire process can take 9-12 months*
- *Most often used for services*
- *Considers cost and quality*
- *Award based on most responsive/best value to the State*
- *Advertised in publications for 2 weeks*
- *“On the street” for 8-12 additional weeks*
- *Evaluation criteria is identified in the RFP*
- *See IC 5-22-9*



# Special Purchasing Methods

## Special Procurement

Special/Emergency purchasing methods may be used when unique circumstances exist, as provided for by Indiana Code IC 5-22-10, allowing standard practices to be circumvented. The need for this type of purchase must qualify under at least one of the criteria defined in IC 5-22-10, sections 4 to 19, and justification must be provided explaining why this type of purchasing method applies.

- *Request for Special Procurement Form is located within PeopleSoft*
- *eSPR Guide [https://www.in.gov/idoa/procurement/files/eSPR\\_Guide.pdf](https://www.in.gov/idoa/procurement/files/eSPR_Guide.pdf)*
- *Contract term – identify with specificity, **including potential extensions***
- *Save online form, e-approval chain, and supplemental justification to include in Contract file (Supplemental Documents folder in SCM)*



Request for Special Procurement Form

GETTING STARTED

**Form** | Instructions | Attachments

Special Procurement Request

\*Subject: 001 PPE supplies  
 Priority: 3-Standard  
 Due Date:   
 Status: Initial [Preview Approval] [Submit]

**AGENCY INFORMATION**

\*Agency / Division: IDOA Parking Facilities  
 \*P # Base Unit: 00061  
 \*P # Requisition #: 0000025255  
 \*Contact Person: Jeanina Werner  
 \*Contact Phone: 3175566666  
 \*Contact email: jwerner@idoa.in.gov

**JUSTIFICATION**

Justification documenting the specific needs, research, and analysis done supporting the request to make this purchase under the IC Special Procurement provisions is required.

The Special Procurement Supplemental Justification (found on the Attachments tab of this PS form) must be downloaded, completed with specific details requested in each section, and the completed document uploaded and attached to be submitted with this request. If more space is needed, additional attachments may be uploaded.

The justification supplement is required; failure to include this information with your request will delay approval and/or be cause for rejection.

Please select the checkbox below if this request is COVID 19 related.  
 Yes, this is COVID 19 related

Will this request result in a one-time purchase?  
 One-Time  
 Term Contract

Please select the checkbox below if this request is a Special Procurement. \*A copy of request.  
 Prior Special Procurement

**VENDOR RESPONSES & RECOMMENDATION**

**SPECIAL PURCHASING METHODS**

INDIANA CODE (IC) 5-22-10  
 SPECIAL PURCHASING METHODS

Allows for purchases without a competitive process provided the facts support the requirements of the code section cited. The information required in this form is intended to document those facts.

Name:   
 Price/Value:

The information on the Instructions tab is VERY important!

There are lots of regulations defined in Indiana Code to consider with a Special Procurement, and lots of business rules that apply, too. Make sure you understand what's required. If you have questions, contact your IDOA Account Manager, one of the Sourcing analysts, or any of the IDOA Procurement Division directors for help.

The Form Structure

Before we start entering any information, understanding how the components of the form are organized will be helpful.

The tabs you see at the top divide the content into three sections.

- The **Form** tab is where all the information required is entered or selected.
- The **Instructions** tab explains a lot about what constitutes a Special Procurement as well as the rules and specifics defined by Indiana Code.
- The **Attachments** tab is where you'll find forms that you need to download, and where you'll attach additional justification or documents for the approvers to review.

Click on the tabs to move back and forth between the sections as needed.

MORE INFO

At first glance the form may look overwhelming, but it's not complicated.

The Forms Builder tool requires the form fields to be organized into one or two columns; This form uses two.

Read it as you might a newspaper. Start with Agency Information section and continue down the left column to the bottom of the page; then return to the top and follow down the right column that begins with the Justification section.



Approve/Review a Form

Seq # 3196  
Subject 061 Laundry, Uniform and  
Go to Form

Approval Action

Comment  
Approve

Review/Edit Approvers

Special\_Procurement\_R

Approved  
Denise Ema May Chadwick  
Head Procurement Agent  
06/07/23 - 8:12 AM

Comments

Save Return to Search

Approve/Review a Form

Form

- A purchase order shall not be issued until the request has successfully completed all required approval steps.
- IDOA / PS workflow will route electronic requests for all necessary approvals, including those required for purchases over \$25,000 and/or IT services/goods.

**INDIANA CODES AND JUSTIFICATION GUIDANCE**

Below, you will find a complete list of available sections under Indiana Code 5-22-10 that you must use when submitting an eSPR. Additional detail for each section is below in *italics*. This is meant to provide some guidance on the types of facts needed or questions to answer. Working with your agency legal, Budget Analyst and IOT contact is recommended.

**\*\*\*Provide the information as if your audience is completely ignorant about your program and the need for the purchase. "Tell the story" so if it was read by someone walking down the street, who owns a business that sells whatever the agency is buying, that they would understand why their business did not get to compete for the state business. \*\*\***

**IC 5-22-10-4 Emergency conditions**

Sec. 4. (a) A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety.

(b) The counterterrorism and security council established by [IC 10-19-8-1](#) may make a purchase under this section to preserve security or act in an emergency as determined by the governor.

- *In the absence of an Executive Order declaring same, you must describe in detail the threat to public health, welfare or safety, AND what might happen if this purchase is not made. It is insufficient to merely claim an "emergency," without defining the circumstances and impact.*

**IC 5-22-10-5 Savings to governmental body**

Sec. 5. A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body.

- *If the vendor is offering a discount off their price, provide documentation/verification that translates to an actual savings. Perhaps their price is already much higher than the market price, so a reduction of a high price does not translate into a "savings". If the savings is not in the form of money, explain that as well. Help the approvers understand what facts exist to support this section of the Code. Also, a special discount if the state buys by X date (typically end of the vendors quarter or year) will typically NOT be sufficient justification. The vendor creating artificial urgency is not the same as savings.*

**IC 5-22-10-6 Auctions**

Sec. 6. A purchasing agent may make a special purchase at an auction.

- *This is not often cited so contact your budget analyst or IDOA to talk through why this is approach is sought to help flush out what facts are relevant.*



Approve/Review a Form

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Subject 061 Laundry, Uniform and M

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Approved

Denise Erna May Chadwick  
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- This is not often cited so contact your budget analyst or IDOA to talk through why this approach is sought to help flush out what facts are relevant.*

**IC 5-22-10-7 Data processing contract or license agreements**

Sec. 7. A purchasing agent may make a special purchase of data processing contracts or license agreements for:

- software programs; or
- supplies or services, when only one (1) source meets the using agency's reasonable requirements.

- Need to explain why this is the only solution that works for the program. Details and specifics are important to provide.*

**IC 5-22-10-8 Compatibility of equipment, accessories, or replacement parts**

Sec. 8. A purchasing agent may make a special purchase when:

- the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and
- only one (1) source meets the using agency's reasonable requirements.

- Explain why the items listed in (1) are a large part of the decision process. Provide detail and justification as to why only this source meets the need. Helpful to provide information on those that are "close" to meeting the need and explain why they do not.*

**IC 5-22-10-9 Purchasing method impairs functioning of agency**

Sec. 9. A purchasing agent may make a special purchase when purchase of the required supplies or services under another purchasing method under this article would seriously impair the functioning of the using agency.





# eSPR Supplemental Justification

## SPECIAL PROCUREMENT REQUEST

### Supplemental Justification

**INSTRUCTIONS:** Please provide a detailed response in each blue-shaded section. If additional space is needed, please add a separate document as an attachment to this Special Procurement Request (SPR) and reference that attachment in the appropriate answer field below. **NO QUESTION SHOULD BE LEFT BLANK** as doing so will result in an automatic DENIAL of the request. More detailed guidance can be found on the Instructions Tab. f

#### IDOA SECTION:

1. Provide a detailed description of the product or service being procured including a description of the SOW. Response should include description of any unique features, characteristics or capabilities of the product(s) or service(s) and how they are necessary, critical, and beneficial for the agency.

Hearing Aid devices, supplies and services.

2. Describe why the service or commodity is currently critical to the mission of your agency.

Allows state entities to receive free or discounted hearing aid needs.

3. Explain why a competitive procurement method are not appropriate for this need. Response should include a detailed justification of the Indiana Code provision cited.

NOTE: The following are unlikely to be sufficient Special Procurement justifications:

- Personal or agency preference for a vendor
- Agency perception that the vendor is the best qualified (this should be determined through a competitive process)
- Lack of agency planning resulting in limited time to conduct a competitive procurement
- Past or existing relationship with the vendor
- Special incentive or deal offered (can be assessed in open and competitive solicitation)
- Agency convenience

This eSPR is to extend the contract to 2025 and to transfer the contract to FSSA-DHHS.

4. Describe market research conducted. Response should include AT LEAST:

- a list of other vendors that operate in this industry that offer similar services or commodities.
- a list of vendors that you engaged before finalizing your decision.
- an explanation of why other vendors were not selected to supply the requested products and/or services
- an explanation of why the chosen vendor was selected

This contract as well as 5 others were awarded the Hearing Aid CPAs where extensive market research was conducted.

5. Provide detailed pricing information. Response should include:

## SPECIAL PROCUREMENT REQUEST

### Supplemental Justification

- An attached quote and/or a detailed breakdown of cost components and quantities, including a description of how both were determined.
- a description of the basis for determining that the pricing is competitive.
- a description of pricing negotiations conducted (even if unsuccessful in lowering the price, what was tried, were ANY concessions made by the vendor? If not, why?), and any savings created.
- "Pricing agreed to with vendor" is NOT an acceptable answer.

Prices were negotiated during the last amendment and will remain in effect.

6. Provide a comprehensive summary that explains why the selected section of IC 5-22-10 is applicable and that the vendor selection is the best value to the State. Justify why the SPR should be approved.

This contract needs to be renewed for a longer period of time and transferred to FSSA-DHHS.

#### IOT SECTION:

\*\* IF THIS REQUEST DOES NOT REQUIRE IOT REVIEW AND APPROVAL, TYPE "NOT APPLICABLE" IN THE BOX BELOW AND SKIP QUESTIONS 7 – 10. \*\*

7. Confirm the understanding, that if this purchase involves a cloud-based product or solution, the agency is aware IOT Cloud Terms & Conditions are required in the contract.

Requesting Agency Confirms

8. Confirm the understanding, that if this purchase involves a cloud-based product or solution, the agency is aware IOT must have a Cloud Security Questionnaire on file for this vendor.

Requesting Agency Confirms

9. If this project is more than \$1,000,000, confirm the IOT Project Risk Management Team has been engaged.

Requesting Agency Confirms

10. Provide any other information it would be helpful for the IOT Reviewer to know.

## SPECIAL PROCUREMENT REQUEST

### Supplemental Justification

#### Request Acknowledgement Statement:

By signing below, you are acknowledging that your Agency Head, CFO, or their designee(s) have approved this request to be submitted and will also sign or approve the contract or purchase that results from this process. Further, you are acknowledging you understand IOT and SRA must also (in most cases) approve this request.

Requestor's Signature -- this often will not be the Head Procurement Agent (type out name and title in the box below):

Kelsie Baire- Vendor Manager



# The eSPR "Form" (electronic submission)

## Review/Edit Approvers



# Special Procurements in PeopleSoft- “eSPR”

**Began using eSPR process in 2020. Approvals per year:**

**2020 - 18 eSPRs**

**2021 - 908 eSPRs**

**2022 – 1,347 eSPRs**

**2023 – 687\* eSPRs**

**\* Thru 6/14/23**



# IDOA's Division of Supplier Diversity (DSD)

## IC 4-13-16.5 Governor's Commission on Supplier Diversity

- IDOA's new Deputy Commissioner of DSD, Kesha Rich
- Authority encompasses Indiana Veteran Owned Small Businesses since 2020 (IC 4-13-16.5-1.5)
- Mission is to provide equal opportunity to minority, women, and veteran owned enterprises in the state's procurement and contracting process
- Actively promote, monitor and enforce the standards for certification of minority, women, and veteran business enterprises
- Core functions:
  - Certification
  - Contract Compliance
  - Business Outreach



# DSD Goals, effective July 1, 2021

| Construction   | Goods and Services | Professional Services | Weighted Average Goal |
|----------------|--------------------|-----------------------|-----------------------|
| Minority<br>7% | Minority<br>8%     | Minority<br>8%        | Minority<br>8%        |
| Women<br>5%    | Women<br>13%       | Women<br>11%          | Women<br>10%          |
| Veteran<br>3%  | Veteran<br>3%      | Veteran<br>3%         | Veteran<br>3%         |



# Contractor Compliance

## IC 4-13-16.5-8 Contractor notice to minority, women's, and veteran business enterprises

...

(f) Before beginning work on a contract, a contractor shall do the following:

(1) Notify in writing each minority business, women's business enterprise, and veteran owned small business designated in the contractor's offer that the contractor has been awarded the contract.

(2) Give copies of each notification to the state agency that awarded the contract.

(g) If a contractor fails to comply with subsection (f), the awarding state agency may consider the failure a breach of contract and do any of the following:

(1) Cancel the contract.

(2) Collect from the contractor all funds paid to the contractor under the contract.

(3) Exercise any of the state's rights set out in the contract.

(4) Use the failure as a basis for finding the contractor not responsible when awarding other contracts.

As added by P.L.228-2007, SEC.6. Amended by P.L.15-2020, SEC.7.



# Contractor Compliance

## What about Contract Amendments and Change Orders?

### **25 IAC 5-6-2 Monitoring MBE and WBE participation as subcontractors**

...

(b) All contract amendments and change order requests **must include the following:**

- (1) An explanation of how MBEs and WBEs will be used.
- (2) The percentage represented above the current contract amount.

### **25 IAC 9-4-1 Monitoring IVOSB participation**

...

(b) All change orders, amendments, and other modifications to the contract that affect value **must include an explanation of the following:**

- (1) How IVOSB will be utilized.
- (2) Any IVOSB percentage changes to the original contract amount



# Templates – where to find them

## Contracts

SCM or

IDOA's website

<https://www.in.gov/idoa/state-purchasing/contract-administration/>

Public Works

<https://www.in.gov/idoa/state-property-and-facilities/public-works/>

## Leases

SCM or

Leasing

Form & Manuals

(link at the bottom)

<https://www.in.gov/idoa/state-property-and-facilities/government-office-space/real-estate-leasing/>

## Fleet & Travel

Fleet information

<https://www.in.gov/idoa/state-resource-management/fleet-services/>

Travel Services

<https://www.in.gov/idoa/state-purchasing/travel-services/>



# **IDOA Review of Contract Documents**

IC 4-13-2-14.1(a)(1)

25 IAC 1.1

## **By the numbers:**

### **Contracts Approved in SCM by IDOA Legal:**

Jan. 1, 2023 thru July 10, 2023: **4,540**

Total # of documents approved in  
Calendar year 2022 = **6,125**

Calendar year 2021 = **9,499**

The state no longer maintains its former system for tracking paper documents. Therefore, the number of paper contracts, amendments, grants, and leases approved by IDOA is not known.



# Document Review at IDOA

## **Before submitting your document for approvals please ensure:**

- The procurement method is well documented and meets IDOA requirements.  
(IC 5-22 and 25 IAC 1.1)
- The contractor's duties & deliverables are clearly defined. (25 IAC 1.1-1-16(b))
- The consideration is clear and concise detailing payment per hour/per day/per month, etc. and the total \$\$.
- You are using the TEMPLATES approved by IDOA & OAG.
- All signatures are present.
- The exhibits are properly labeled, referenced in the contract and attached.
- Changes to the boilerplate are clearly identified **in Section 50. State Boilerplate Affirmation Clause.**





## What might delay IDOA's review?

#1 Delay- your document is a hard copy/paper contract

#2 Delay- no procurement documentation or insufficient documentation

#3 Delay – no clearances or insufficient documentation of clearances



# Where can I find helpful checklists?

“Before you send your contract through the approval process, check it against the following list. If all items are completed, your contract should not encounter any problems during the approval process.”

1. DPAP Manual - page 54
2. Professional Services Contract Manual
  - Contract checklist - page 24
  - Amendment checklist – page 54



# Tell me more about Clearances

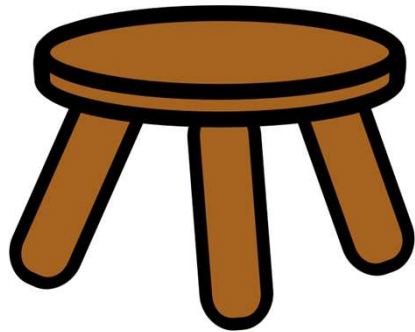
Clearances are required by law, the terms of the Contract/Grant/Lease, and IDOA Policy.

- Department of Workforce Development (DWD)
- Department of Revenue (DOR) IC 4-13-2-14.5
- Secretary of State (SOS) IC 5-22-16-4(a)
- IDOA's list of suspended or debarred vendors
- SAM – federal government's list of suspended or debarred vendors



## Contract Drafting

Three Essential Elements of a Contract  
**Offer – Acceptance – Consideration**



*Make sure your contract identifies some form of consideration whether monetary \$ or other.*


\*state contracts must be in writing  
IC 4-13-2-14.2



# Can I make changes to the templates?

- Identify those changes clearly in Section 50 (contract) and Section 26 (grant)
- Section heading may reflect “modified” or “revised”

For example: “**28. Insurance [Modified]**”

- Some agencies have identified small changes in **bold** within the clause.
- Consult with your agency legal for risk assessment and risk tolerance.  
Document agency legal approval within SCM via Supplemental Documents.
- Pre-review by IDOA (please allow 2 weeks for review & comments)
- We  Form Approved contracts, grants, and other agreements.



# Speaking of Templates...

## Using the Addendum Template for Software as a Service agreements

**Section 2. Duties** must be clearly defined. Include:

- *the software trade name being purchased*
- *purpose of the software (why/how does your agency use the software)*
- *software support services or maintenance, describe them briefly*
- *enhancements provided by the Contractor, describe*



# Real Estate Transactions and Public Works

Does IDOA handle these things,  
too?

- State real property transactions are governed by IC 4-20.5 and most often administered by IDOA.

*\*Steve Harless, Deputy Commissioner State Resource Management*

- Public Works are governed by IC 4-13.6 and are generally administered by IDOA.

*\*Robert Grossman, Director Public Works Division*

These types of transactions are subject to procurement laws and an approval process but are beyond the scope of this presentation.





# Resources for Leasing and Public Works

**Templates, Policies, and Manuals for these transactions are on IDOA's website and standard templates are in SCM.**

**Leasing** <https://www.in.gov/idoa/state-property-and-facilities/government-office-space/real-estate-leasing/>

**Public Works** <https://www.in.gov/idoa/state-property-and-facilities/public-works/general-forms-and-manuals/>



# Fleet Services



IDOA Fleet Services provides a variety of vehicle services to state agencies.

Fleet Services is divided into two sections: Vehicle Administration and Vehicle Maintenance.

*Fleet Services website:*

<https://www.in.gov/idoa/state-resource-management/fleet-services/>

*\*Nancy Morris, Director of Fleet Services*

***State vehicles are not self-insured.***



# Integrity & Ethics in State Procurement

## Why does it matter?

- Hoosier taxpayers have the right to expect the best products & services at the best prices
- Public trust & confidence in government
- Transparency & Accountability (remember IDOA's mission statement)
- Important contract clauses:
  - Assignment of Antitrust Claims*
  - Non-Collusion and Acceptance*
- Follow the laws, regulations, and policies on public procurement & State Ethics Code



# Refresher on Bid-rigging, Price Fixing and Collusion

- IDOA hosted a webinar presented by U.S. Dept. of Justice's Procurement Collusion Strike Force (PCSF) on 10/7/2020.
- PCSF recently presented at the Office of the Inspector General's recent Auditor & Investigator Conference on June 8, 2023.



# What is Bid-rigging?

Bid-rigging occurs when competitors agree who will submit the winning bid.

Here are several examples:

- **Bid Suppression:** One or more competitors agree to “not bid” on a project so the “agreed upon winner” gets the contract
- **Complementary Bidding or “Courtesy” Bidding:** The previously agreed upon “losing bidder competitors” submit bids that are obviously too high or have too many special conditions to be accepted. (Creates the appearance of competition.)
- **Bid Rotation:** You get this one and I’ll take the next one...



# What is Price Fixing?

An agreement between competitors to set the price of their products or services.



*Former Bumble Bee CEO Sentenced To Prison For  
Fixing Prices Of Canned Tuna  
Tuesday, June 16, 2020*



# What is Market Allocation?

Market allocation occurs when competitors agree to divide up the market between themselves and agree not to compete in the other designated areas, products or customers.

Examples:

- **Geographic area**: Company A will take the northern half of Indiana and Company B will only take contracts in the southern half.
- **Products**: Company A will only bid on toner and Company B will only bid on copier paper.
- **Customers**: Company A will only provide services to K-12 schools and Company B will take the colleges





# A Case of Corruption in Muncie, IN



**Between 2014 – 2019  
Bid rigging & kickback scheme**

**Four Muncie Public Officials, a Former Police Officer,  
Two Contractors, and a Private Citizen Convicted and  
Sentenced for more than \$3 Million in “Pay to Play”  
Schemes**  
Jan. 3, 2023



# More from the U.S. Attorney's Office, Southern District of Indiana

**Pigeon Township Trustee and  
Two Co-Conspirators Charged  
with Stealing Thousands of  
Dollars from Local Taxpayers  
in Kickback Scheme**

**April 26, 2023**



# Judge Tanya Walton Pratt sentences Bloomington public official to federal prison June 9, 2015



Between April 2011 – March 2015

Concrete jobs for roads &  
sidewalks rewarded with  
bribes & kickbacks

~~PAID IN FULL~~  
**FALSE INVOICES**

~~PAID IN FULL~~  
**FALSE INVOICES**



# PCSF press releases

force

<https://www.justice.gov/procurement-collusion-strike->

**Former construction company president sentenced for attempting to monopolize highway construction, repair contracts (Billings, MT) 3/29/2023**

**Insulation Contracting Firm Co-Owner Sentenced to Fifteen Months in Prison and Ordered to Pay more than \$1 Million to Victims of Bid Rigging and Fraud**  
Victims include the University of Connecticut, the City of Hartford, PepsiCo. Inc., Stamford Hospital, and Yale University 2/14/2023

**Construction Company Owner Sentenced for Fraud in Securing Millions of Dollars in Contracts Intended for Service-Disabled Veteran-Owned Small Businesses (Texas) 1/18/2023**

**Inland Empire Man Agrees to Plead Guilty in Bid-Rigging Scheme to Obtain Contracts to Provide Food to Federal Prison Facilities (Los Angeles, CA) 4/5/2022**



# How can I help ensure integrity in state procurement?

- Follow the laws, regulations, and policies on public procurement & State Ethics Code
- Expand the list of bidders
- Maintain procurement records
- Ask questions
- Report your suspicions to the Office of the Inspector General  
<https://www.in.gov/ig/hotline/>



## ENJOY THE FULL ARTICLES AND PRESS RELEASES:

[Price Fixing, Bid Rigging, and Market Allocation Schemes: What They Are and What to Look For](https://www.justice.gov/atr/file/810261/download)

<https://www.justice.gov/atr/file/810261/download>

<https://www.justice.gov/atr/preventing-and-detecting-bid-rigging-price-fixing-and-market-allocation-post-disaster-rebuilding>

<https://www.justice.gov/opa/pr/former-bumble-bee-ceo-sentenced-prison-fixing-prices-canned-tuna>

<https://www.justice.gov/usao-sdin/pr/four-muncie-public-officials-former-police-officer-two-contractors-and-private-citizen>

<https://www.justice.gov/usao-sdin/pr/pigeon-township-trustee-and-two-co-conspirators-charged-stealing-thousands-dollars>

<https://www.justice.gov/usao-sdin/pr/judge-tanya-walton-pratt-sentences-bloomington-public-official-federal-prison>



# INDIANA ATTORNEY GENERAL'S OFFICE



**Philip Gordon, Deputy Attorney General, Section Chief, OAG**  
**James Harry, Deputy Attorney General, OAG**



# OFFICE OF THE ATTORNEY GENERAL (OAG)

## I know what IDOA reviews for – what role does the OAG play in this process?

- The OAG reviews for form and legality: “The attorney general must review for form and legality contracts to which a state agency is a party” and, if the contract “does not meet the requirements of law”, the OAG must disapprove the contract in writing and “assist the agency to remedy defects that are found, if possible.” IC § 4-13-2-14.3
- The OAG has 45 days to review; if the OAG does not respond within 45 days of submission, the contract is deemed approved.
- The OAG is always the last step in the process – it will **always** be approving the final document to which all other parties have agreed.



# OAG ROLE DEFINED

## **4-13-2-14.3 Contracts of state agencies; review by attorney general of form and legality; advice to agency; forms**

(a) Except as provided in subsection (e), **the attorney general must review for form and legality contracts to which a state agency is a party**, unless the contract is not required to be in writing under section 14.2 of this chapter.

(b) If the attorney general finds that a contract does not meet the **requirements of law**, the attorney general **shall**:

- (1) disapprove the contract;
- (2) explain in writing to the contracting agency how the contract is legally defective; and
- (3) assist the agency to remedy defects that are found, if possible.

(c) If the attorney general finds that the **form of a contract** is inappropriate but that the contract is legal, the attorney general **may** disapprove the contract and shall advise the agency how the form is defective and how the form may be improved.

(d) The attorney general shall advise the contracting agency as to the form and legality of the contract within **forty-five (45) days** after its submission for review. **If the attorney general does not advise the agency within forty-five (45) days after submission, the contract is considered to be approved.**

(e) The attorney general may approve contract forms or, by rules adopted under IC 4-22-2, contract types to be used by a state agency and specify the conditions under which the approved forms or types may be used. An agency using a contract form or contract type approved by the attorney general is not required to submit individual contracts using the forms or types for review by the attorney general under this section. Changes in an approved form or type must:

- (1) be approved by the attorney general; and
- (2) be made in accordance with IC 5-15-5.1-5.

(f) **The attorney general may delegate to a deputy a power or responsibility given to the attorney general under this section.**



# CONTRACT BASICS

## What is a Contract?

An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. Black's Law Dictionary (11<sup>th</sup> ed. 2019).

## What is the importance of a good contract?

When construing the meaning of a contract, our primary task is to determine and effectuate the intent of the parties. First, we must determine whether the language of the contract is ambiguous. The unambiguous language of a contract is conclusive upon the parties to the contract and upon the courts. If the language of the instrument is unambiguous, the parties' intent will be determined from the four corners of the contract. If, on the other hand, a contract is ambiguous, its meaning must be determined by examining extrinsic evidence and its construction is a matter for the factfinder. When interpreting a written contract, we attempt to determine the intent of the parties at the time the contract was made. We do this by examining the language used in the instrument to express their rights and duties. We read the contract as a whole and will attempt to construe the contractual language so as not to render any words, phrases, or terms ineffective or meaningless. We must accept an interpretation of the contract that harmonizes its provisions, rather than one that places the provisions in conflict.

*Ryan v. Lawyers Title Ins. Corp.*, 959 N.E.2d 870, 875 (Ind. Ct. App. 2011) (internal citations omitted)



# CONTRACT BASICS – Development Reminders

## GOALS IN CONTRACT DRAFTING:

- (1) Be Clear (unambiguous).
- (2) Be Concise (do not get too “wordy”)
- (3) Don’t agree to prohibited terms.
- (4) Include all necessary boilerplate terms.
- (5) Perform proper risk assessment when negotiating terms.
- (6) When in doubt, contact the IDOA and the OAG.



# OAG REVIEW – BEHIND THE SCENES

- The Advisory Section of the OAG is responsible for all matters relating to contracts.
- Jean Marie Leisher manages Advisory's contract process. All SCM contracts route to her first. Jean Marie then assigns them to the Deputy Attorneys General ("DAGs") who review and approve them.
- 11 DAGS review contracts and requests for form approval – in addition to all of their other duties. They strive to have contract approvals done within 10 business days.
- The Advisory Chief Counsel approves contracts over \$10M. Certain DAGs have delegations up to \$10M, but most DAGs have delegations up to \$3M.
- All of the OAG reviewers check to make sure that referenced exhibits are attached, that the term and consideration amounts are consistent, and – in the case of an amendment – that the underlying contract has not already expired.



# OAG REVIEW FOR BASIC INFORMATION

- Term – the timeframe
- Consideration – what I get in exchange for a good or service that has been bargained
- Parties – who is signing the contract?
- Signatures – binding the parties to the contract
- Exhibits – clearly labeled and incorporated
- Mandatory clauses included
- Prohibited clauses excluded



# OAG REVIEW FOR BASIC INFORMATION – REQUIRED CLAUSES

- Compliance with laws – state and federal
- Ethics IC 4-2-6 *et seq* & IC 4-2-7 *et seq*
- Telephone Privacy (IC 5-22-3-7)
- Electronic Payment (IC 4-13-2-14.8, & -20)
- E-Verify (IC 22-5-1.7-11, -12, & -13)
- Drug-free Workplace (EO 90-05)
- Governing law (IC 34-13-2-3(d))
- Funding Cancellation (IC 5-22-17-5 & FMC 3.3)
- Non-Discrimination (IC 22-9-1-10)
- Non-Collusion





# OAG REVIEW FOR BASIC INFORMATION – PROHIBITED CLAUSES

Any provision:

- requiring the State of Indiana to provide insurance
- requiring the State of Indiana to provide indemnity
- providing that the contract be construed in accordance with laws other than those of the State of Indiana
- providing that suit be brought in any state other than Indiana
- providing for resolution of contract disputes
- requiring the State of Indiana to pay any taxes
- requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney's fees



# OAG REVIEW FOR BASIC INFORMATION – PROHIBITED CLAUSES 2

Any provision:

- modifying the applicable Indiana statute of limitations
- relating to the time within which a claim must be made
- requiring payment of consideration in advance unless authorized by an exception listed in IC § 4-13-2-20
- limiting disclosure of the contract in violation of the Access to Public Records Act, IC § 5-14-3. This is a Public Contract and will be posted on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2
- requiring payment in less than 35 days
- providing for automatic renewal – instead, execute an Amendment extending the term if the contract has not expired



# FORM APPROVED CONTRACTS/GRANTS

- A form approval is a template form which may be used by an agency for one year from the date of approval.
  - Intended to be used when a contracting state entity anticipates a high number of contracts or grants for the same purpose/services with different contractors or grantees.
- Contracts and grants entered into within the year timeframe using the approved form do not have to be reviewed by the Attorney General for form and legality.
  - This has the added advantage of speeding up the contract approval process and providing the contracting state entity with a consistent legal document that is lawful as to form and content.
- No changes can be made to the approved form other than filling in the template blanks.



# FORM APPROVED CONTRACTS/GRANTS continued

- To seek form approval, you must submit a form approval request form, [https://www.in.gov/idoa/files/Form-1028\\_Form-Approval-Request-Sheet.pdf](https://www.in.gov/idoa/files/Form-1028_Form-Approval-Request-Sheet.pdf), along with the draft contract/grant to the Attorney General at [contracts@atg.in.gov](mailto:contracts@atg.in.gov).
  - The draft contract/grant you are submitting must be submitted in Microsoft Word format.
- Please make sure to include a “Prepared by” statement on the document.
  - This is verification that each form approved contract has actually been reviewed by the agency legal counsel before execution; agency legal counsel ensure the initial and final integrity of the agreement.
  - *This Contract [Grant] was prepared by agency legal counsel [NAME] on [DATE].*
- Any exhibits/attachments referenced in the form should be included and labeled properly; at a minimum, include placeholder pages.



# FORM APPROVED CONTRACTS/GRANTS

## continued

- Once approved, the agency will receive a letter from the OAG with the template name and form approval number associated with the template that has been approved.
- Contracts that have received form approval will have a statement in placement rather than the regular Attorney General signature block.
- The OAG will send the approval letter via email to the person who requested the form; IDOA will also be provided copies of all form approvals to help monitor the integrity of the process.
- **It is the agency's responsibility to request the form approved template be created in SCM.**
  - For further information, please consult the 2022 Contracts Manual at: [https://www.in.gov/idoa/files/2022\\_Contract\\_Manual\\_20220418.pdf](https://www.in.gov/idoa/files/2022_Contract_Manual_20220418.pdf).
- PLEASE MAKE SURE TO DESTROY ALL ELECTRONIC COPIES OF OLD FORMS UPON RECEIPT OF FINAL APPROVAL OF THE NEW FORM CONTRACT.
- **REMINDER:** The form is approved as of the date of the approval letter. Approval expires exactly one year from that date. IDOA will not approve a contract document that has been signed by the Contractor after the expiration of the form approval.
- **ADDITIONAL REMINDER:** If you amend an agreement that has previously received form approval with a standard amendment (and not a form approved amendment), you will need to go back and manually select the correct approval path in SCM.





John von Arx, *Senior Budget Analyst, State Budget Agency*

# SBA Background and FMC's

- The State Budget Agency is charged with the duty and responsibility of serving as fiscal analyst, administrative budget officer, fiscal forecaster and fiscal policy advisor to the Governor. By statute, the Governor appoints the State Budget Director and two Deputy Directors
- The Budget Agency facilitates the processes of revenue forecasting and budget development and implementation. The agency is also responsible for evaluating the fiscal and policy impacts of legislative proposals and making this information available to decision makers. Each biennium, the agency compiles fiscal data from state agencies and works with the legislature to develop the State's budget
- More information about the State Budget Agency can be found in Title 4, Article 12, Chapter 1 of the Indiana Code



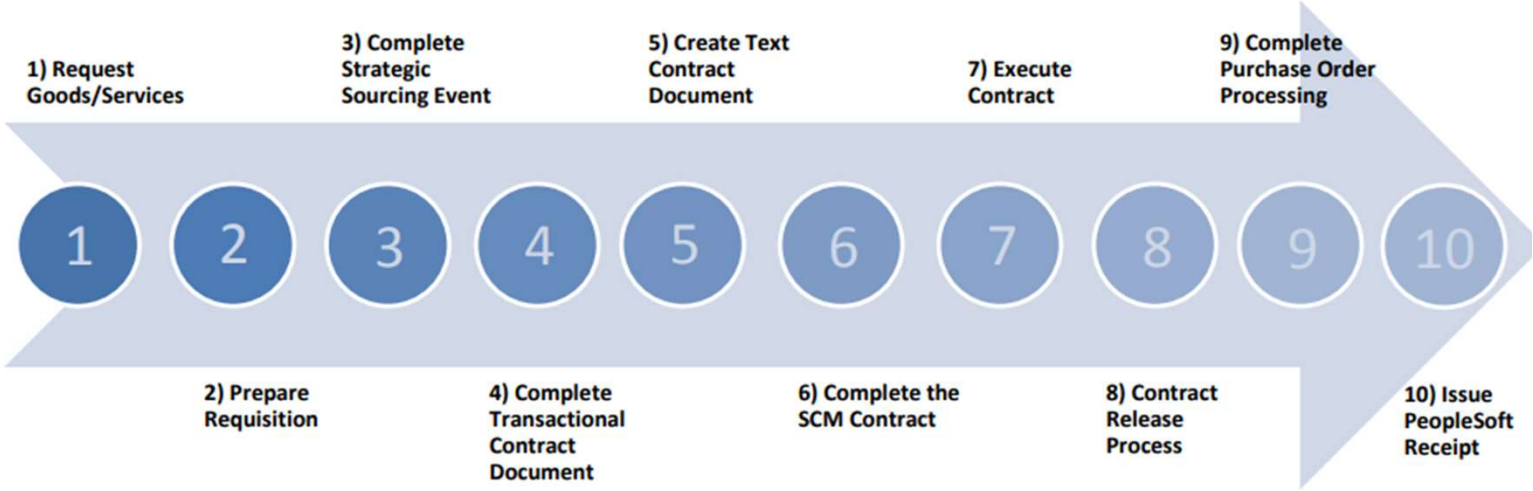
# SBA Background and FMC's

- IC 4-12-1-13 allows the State Budget Agency (SBA) to adopt and enforce financial guidelines for state agencies to follow. The Office of Management and Budget (OMB) has similar authority under IC 4-3-22-4. We refer to this guidance as Financial Management Circulars (FMCs)
- Previously existing FMC's were repealed on December 31, 2021, and the new FMCs went into effect on January 1, 2022
- Primarily applies to only executive branch agencies IC 4-12-1-13(g)
- For today's purposes, we will be discussing the updated contract management FMC's found here - <https://www.in.gov/sba/budget-information/financial-management-circulars/>

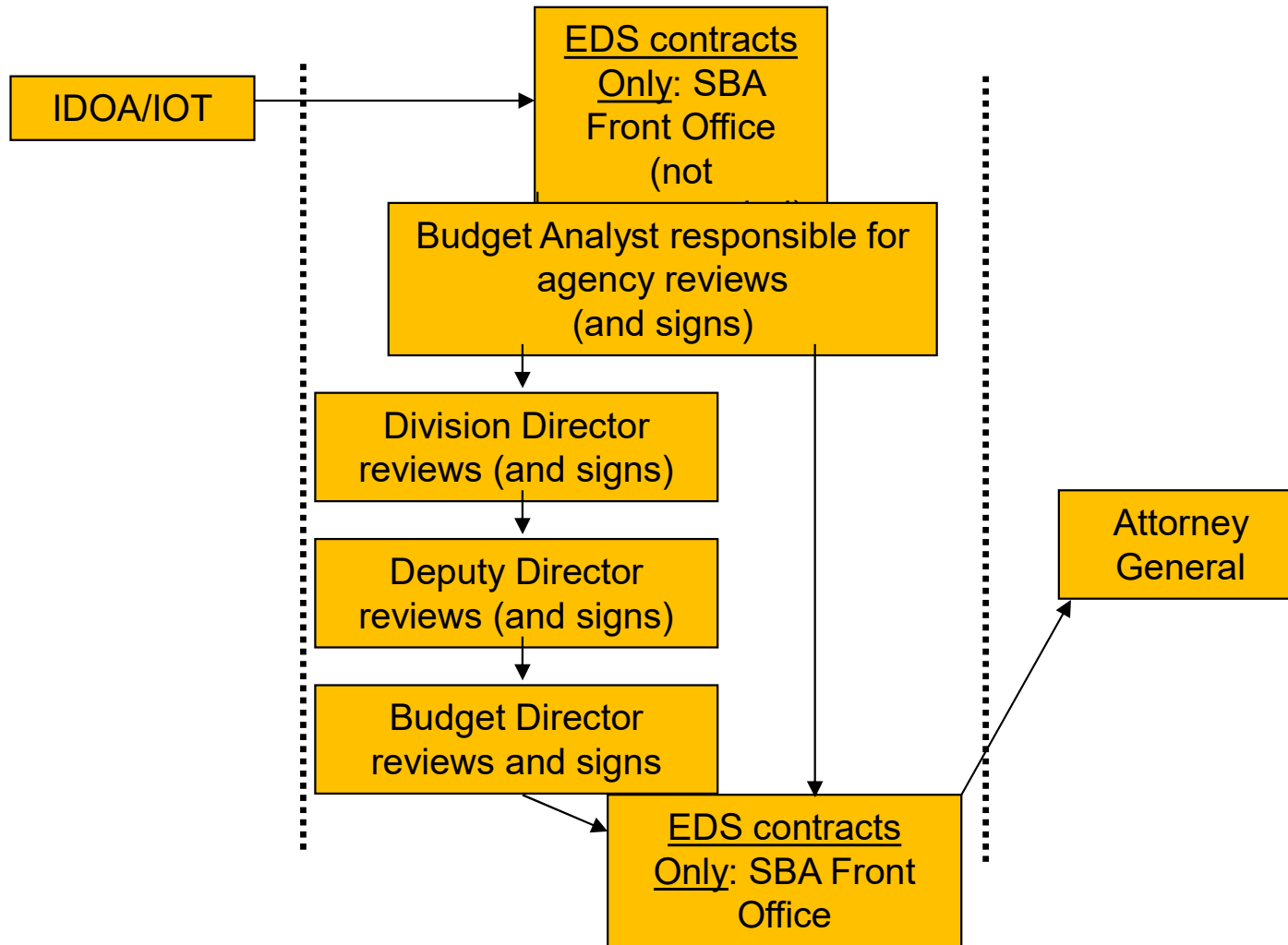
# Contract Creation Process



**Financials Procedure Overview**  
Purchase that does require solicitation and an SCM contract



# How does the contract approval process work at SBA?



# What are the “Fiscal Issues” SBA is looking for in a contract?



- Financial impact of the contract to the agency
  - Total cost of contract, fiscal year by fiscal year impact, funding sources, etc
  - Impact of contract to the agency's budget and spending plan, CFO sign off
  - Cost per unit, per hour, per product, etc.
  - SBA will work with agency financial staff or controllers to understand the financial impact of the contract

# What are the specific clauses SBA requires in a contract?



## ■ Funding cancellation

- **FMC** 3.3 (January 1, 2022) requires that all contracts contain the following language:

“When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support the continuation of performance of this contract, the contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support the continuation of performance shall be final and conclusive.”

- **IC 5-22-17-5**

Funds not appropriated or not available; cancellation of contract

Sec. 5. (a) When the fiscal body of the governmental body makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled.

(b) A determination by the fiscal body that funds are not appropriated or otherwise available to support continuation of performance is final and conclusive.

*As added by P.L.49-1997, SEC.1.*

# Specific key clauses (To be continued)



- Other Key Clauses SBA Considers.
  - Termination for convenience (while not mandatory, inclusion of this clause is highly recommended.)
  - Out clause (normally with leases)
  - Performance measures, outcomes, service levels, penalties
  - Consideration and Term (make sure its clear and matches the EDS, other attachments)
  - Renewal Options, Payments (35 days in arrears)
  - Requirements of a pass-through entity in 2 CFR Part 200.331 in exhibit documents

# How can I expedite the contract review process?



- SBA goal to return contracts with 48 hours of receipt and within 5 days maximum
- Large policy or dollar amount contracts coming through for approval
  - If the agency has a high priority contract coming through, or will be coming through for approval, advanced notice and information is helpful to SBA
  - Working with SBA staff before a major contract, or high priority contract, comes through for approval can cut down on review time in SBA
    - If total consideration is less than \$2,000,000, Budget Analysts should approve these contracts.
    - If total consideration is less than \$10,000,000, Assistant Directors should approve these contracts.
    - If total consideration is \$10,000,000 or greater, the Deputy Budget Director should approve these contracts



# How is the MOU review process different from the contract review process?



- A Memorandum of Understanding (MOU) between two state agencies must be reviewed and approved by SBA
- SBA review and approval of MOUs are required by FMC FMC 3.4 (January 1, 2022)
- The same policies concerning approval of contracts by SBA apply to MOUs
- Generally, MOU's between state agencies should only extend as far as the current budget period. For example, July 1, 2023 – 6/30/2025.
- Preference is to journal expenses between agencies

# INDIANA ATTORNEY GENERAL'S OFFICE



**Philip Gordon, Deputy Attorney General, Section Chief, OAG**  
**James Harry, Deputy Attorney General, OAG**

# TEMPLATES I

**I know from law school what a contract is and what it should contain, but I'd really feel better seeing what some other state contracts look like. Any suggestions?**

Uniformity and Consistency are Key to the Success of the State Contracting Process. Well over 10,000 contracts and grants flow through the system each year.

The reviewing agencies CANNOT do their jobs effectively and efficiently without considerable standardization.

The OAG and IDOA have developed templates to be used as the basis for contracts or grants.



# TEMPLATES II

Updated templates are automatically loaded into SCM. They can be viewed in Word format on IDOA's contract management website:

<https://www.in.gov/idoa/state-purchasing/contract-administration/contract-forms-manuals-and-templates/>.

Standard templates include those for:

- Professional Services
- Grants
- State Education Institution Contracts
- Amendments
- Addendums
- Outside Counsel Contracts



**ALWAYS USE THE CURRENT TEMPLATES!**

You may customize a template for use by your agency, but please coordinate with IDOA and OAG.



# THE ADDENDUM TEMPLATE

## What is the addendum template used for?

- A vendor may present its form contract for the State to sign. This is particularly common in technology contracts.
- The Vendor's form contract always has clauses that are in the Vendor's best interest, not the State's; it likely contains clauses that are not legal in State contracts (*i.e.*, governing law, indemnity, arbitration, payment of fees and costs).

## **NEVER SIGN THE VENDOR'S FORM CONTRACT, USE THE STATE'S ADDENDUM**

- Regardless of what the Vendor's Account Executive says, the Vendor's boilerplate terms are negotiable



# MORE ABOUT THE ADDENDUM

## What should I be aware of in the addendum?

- It must **always** take precedence over the form contract. The first paragraph provides: *“Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.”*
- It has a list of terms and conditions that the State cannot agree to and that the Vendor must agree are deleted from its form contract.
- The Addendum has terms and conditions that are required by law to be in contracts to which the State is a party or in which public funds are spent.
- Always take the time to read the vendor’s form contract; it often has business terms that are important for your client to be aware of.



# AMENDMENTS

**Our contractor has changed its name and asked that all future payments be made payable to the new name. Is there anything I need to do?**

Any time you are modifying a contract to change the amount of consideration, to change the term, to change the scope of work, to change the name of the vendor:

**DO AN AMENDMENT AND ROUTE IT THROUGH THE APPROVAL PROCESS.**

The current amendment template will also include any mandatory clauses resulting from statutory changes.

An expired contract cannot be amended; a new contract must be done. A contract is deemed expired if the amendment is not signed by the vendor on or before the expiration date.





# THE OUTSIDE COUNSEL TEMPLATE

- All agencies **MUST** obtain OAG consent **PRIOR** to entering into an agreement for legal services with a law firm or attorney, with limited exception. When in doubt, please consult the Indiana Code.
- **Statutory Authority for Consent to Hire Outside Counsel:**
  - IC 4-6-5-3 provides that no agency, except as provided by this chapter, shall have the right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service on behalf of such agency and the state without the written consent of the Attorney General.
- An approved request to hire outside counsel will receive a consent letter. That consent letter **MUST** be attached to your outside counsel agreement.
- Any type of amendment to an Outside Counsel Contract requires prior approval from the Attorney General. Requests for amendment must be submitted to the Attorney General. A new consent letter will be issued for each amendment. A contract amendment must be executed following consent and should include the consent letter as an exhibit to the amendment.



# OAG REVIEW FOR BASIC INFORMATION – COMMON ERRORS INHIBITING OAG APPROVAL

- Consideration errors – dollar amount errors
- Missing pages
- Term errors
- Failure to incorporate exhibits properly
- Required clauses missing or altered impermissibly (not merely hiding in a different place.)
- Improper “Business Decisions” – failure to perform a risk analysis



# OAG FORM AND LEGALITY APPROVAL – CONSIDERATION ERRORS

- Always double check consideration amounts and total remuneration.
- Budgeted amounts in grants and contracts, which is often provided in an exhibit, often fail to match up with the actual consideration and total remuneration amount in the body of the contract.
- Be diligent in reviewing both the dollar amounts entered in the body of the contract and the corresponding exhibits or budgets.
- **When inputting dollar amounts, do not spell it out. Use only numbers to show consideration.**
- For amendments, they often purport to add a specific amount of money to an underlying contract equaling a new total remuneration amount, but the new total does NOT match the underlying contract amount plus the amendment amount. Always double check the math and review prior amendments.



# OAG FORM AND LEGALITY APPROVAL – MISSING PAGES OR DOCUMENTS

- Quite frequently, we see contracts that are signed and executed properly but fail to include certain pages or exhibits. Or, in the alternative, the exhibits are not referenced in the agreement but are attached.
- Assure page numbers are included and in the proper order prior to submitting for approvals.



# OAG FORM AND LEGALITY APPROVAL – TERM ERRORS

- Failure to reconcile the stated length of term in days/months/years to the corresponding start and end dates.
- Always make sure the term of the agreement aligns with what is actually stated.
- For example, “This Contract shall be effective for a period of one (1) year. It shall commence on April 22, 2022, and shall remain in effect through August 31, 2022.” These two sentences create ambiguity in the contract term **and prevent OAG approval.**



# OAG FORM AND LEGALITY APPROVAL – FAILURE TO INCORPORATE EXHIBITS

- Exhibits must be properly labeled, incorporated into the contract, and referenced.
- Simply attaching a document is neither necessary nor sufficient for incorporation. See *Kleen Leen, Inc. v. Mylcraine*, 174 Ind. App. 579, 583, 369 N.E. 2d 638, 640-41 (Ind. Ct. App. 1977).
- Why is this so important? So that it is clear to individuals looking through the contract and series of amendments and exhibits to those amendments that an exhibit has not been left out or improperly referenced.
- This includes situations where there is an amendment attached but not incorporated in the language of the contract, or situations where an exhibit is incorporated in the language in the contract and then not attached as part of the submission.
- Clearly marking exhibits tells the reader the exhibit is an actual part of the contract.
- If an exhibit is not properly incorporated, the OAG will request the contract be withdrawn and resubmitted.



# OAG FORM AND LEGALITY APPROVAL – REQUIRED CLAUSES MISSING OR ALTERED

- State required contract provisions should not be altered or omitted.
- Vendors should understand **at the beginning of your negotiation** that these are **non-negotiable** and required to be included under Indiana law.





# OAG FORM AND LEGALITY APPROVAL – FAILING TO CONDUCT RISK ANALYSIS

- Often, and as discussed previously, agencies will remove provisions that are not technically required by statute or otherwise. Generally, removal is not a form or legality problem for the OAG.
- However, that doesn't mean that agencies have performed the proper risk analysis to justify why removal is appropriate or in the State's best interests. The common response is "this is the way we have always done it" or "the contractor asked for the removal of 'X' clause." Just because a clause can be removed, doesn't mean it should be removed!
- Agencies should be cognizant that while a contract may be approvable, it doesn't mean that the State is protected against unnecessary risk.
- Examples would include higher dollar amount contracts where an agency agreed to remove all insurance requirements. Likely not advisable no matter what the circumstances. **Additionally, limitation of liability clauses are another popular addition to state contracts. Remember, the state cannot accept liability of another and you should review and understand in what ways the contractor is limiting its liability and be mindful of the dollar amount of contracts as well as services being provided.**



# OAG FORM AND LEGALITY APPROVAL – FORCE MAJEURE PROVISIONS

- What is a force majeure clause?
  - A force majeure clause aims to excuse a party's performance when performance is prevented by circumstances outside of the party's control. Although this is the general understanding, what ultimately controls is whether there is specific language in the contract that excuses performance because of a *specific* type of event. A recent case on force majeure, *Specialty Foods of Indiana, Inc. v. City of South Bend*, 997 N.E.2d 23 (Ind. Ct. App. 2013), provides helpful guidance on how a court reviewed specific language in a contract to determine whether a force majeure event excuses a party's performance.
- What does the State's boilerplate clause say?
  - In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- **REMINDER: For State contracting purposes, a force majeure event is one that is by an "act of God" or caused by a natural disaster. You should never agree to a force majeure clause that is tied to economic considerations/performance or something beyond what is stated in the State's boilerplate clause.**



# IN CONCLUSION...

Follow these rules, ask questions when necessary, and the contracting process will go smoothly!





# IOT AND IT CONTRACTS

The straight dope from Jim Ehrenberg and Terri Messer





## Part I.

The Standard Terms and Conditions  
of the State's Boilerplate Contract Templates  
*(including IT-Related Ones, Obviously)*  
and  
What to Do if You Want to Change Them

Q: Why does the State have contract templates?

Q: Why does the State have contract templates?

A: We have them for two reasons. **First**, the templates are intended to broadly protect the State from any number of unknown potential harms. They contain the terms that the “approving agencies” think will do that job in most cases.

**Second**, the templates enable the approving agencies to review the hundreds of contracts that the State enters into, each year, in a relatively short amount of time.

Q: What do the “approving agencies” see as their main job when it comes to the contract-review process?



Q: What do the “approving agencies” see as their main job when it comes to the contract-review process?

A: They see their main job as conducting a “due-diligence review” of our contracts to make sure that we are not agreeing to contract terms that do not protect the State to – ***at least*** – the minimum degree to which it needs to be protected.

Q: Why are the “approving agencies” hesitant to approve changes to the State’s contract templates?

Q: Why are the “approving agencies” hesitant to approve changes to the State’s contract templates?

A: They are hesitant because they don’t know very much about the products or services that our agencies are buying, what they do, why we need them, or how our deals could somehow cause harm to the State. And their main job, again, is to make sure that the State is protected to – ***at least*** – the minimum degree to which it needs to be protected. It’s a BIG responsibility.

Put yourself in their shoes.

How would you see your requests to make changes to the standard terms in the State's contract templates if you were them?

I tried to put myself in their shoes a while back. . . .

And I realized that the “approving agencies” essentially saw IOT like this.

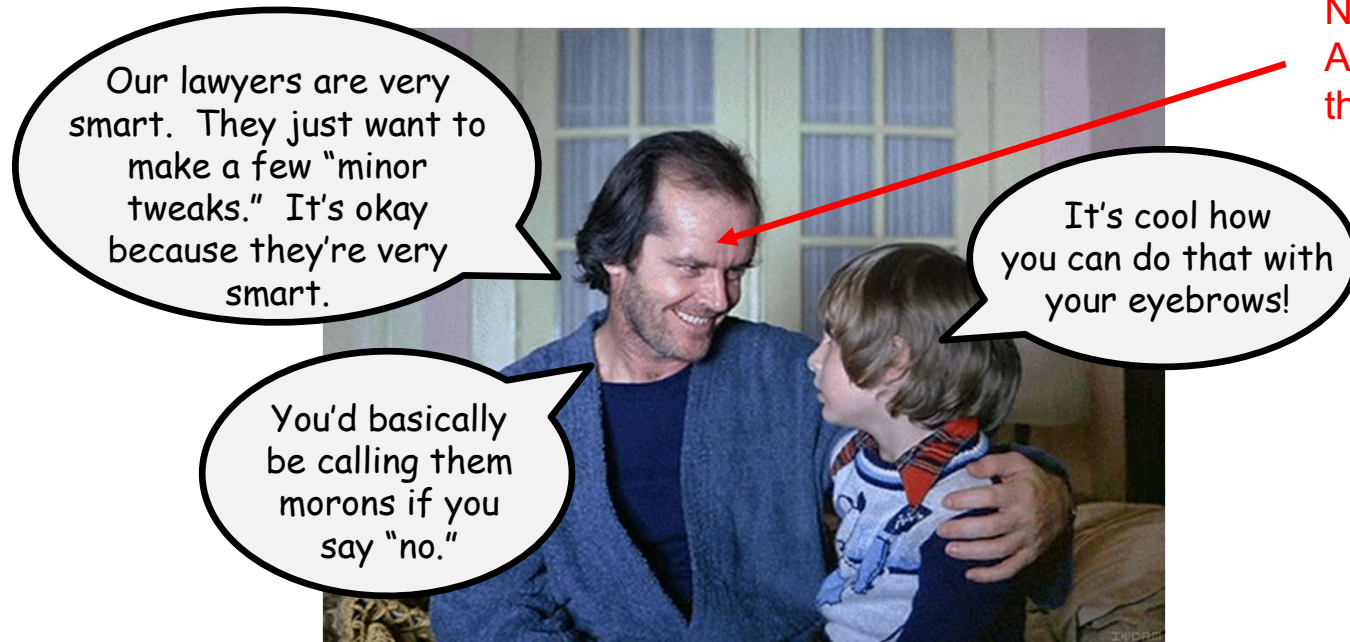


And this is how they saw our prospective vendors.

Probably did  
not murder  
Jeffrey Epstein  
at the personal  
request of Bill  
Gates.



This is one of IOT's vendors asking us to revise some of the standard language in the State's boilerplate professional services agreement template. They say they *must* have the revisions.



Not a good sign.  
Avoid vendors  
that do this.



This is the IOT Procurement Team informing IOT Legal that meetings have been scheduled with the “approving agencies” to discuss the vendor’s proposed changes.





This is IOT going to a meeting, with IDOA and SBA, to discuss the revisions our vendor wants.

Demo version of “Big Wheel” tricycles that will be provided to state employees, in 2024, in lieu of salary increases. (Only “meets expectations” or higher.)



This is IOT arriving at the meeting.



This is everybody doing introductions.



Surprisingly  
cheap on  
Amazon.  
Boys' sizes  
up to "husky."

Bruuuuuuuuuuuuhhhh

And this is IDOA and SBA telling IOT that they have *grave* concerns with us making our vendor's proposed revisions because the revised language won't protect us like we're normally protected.

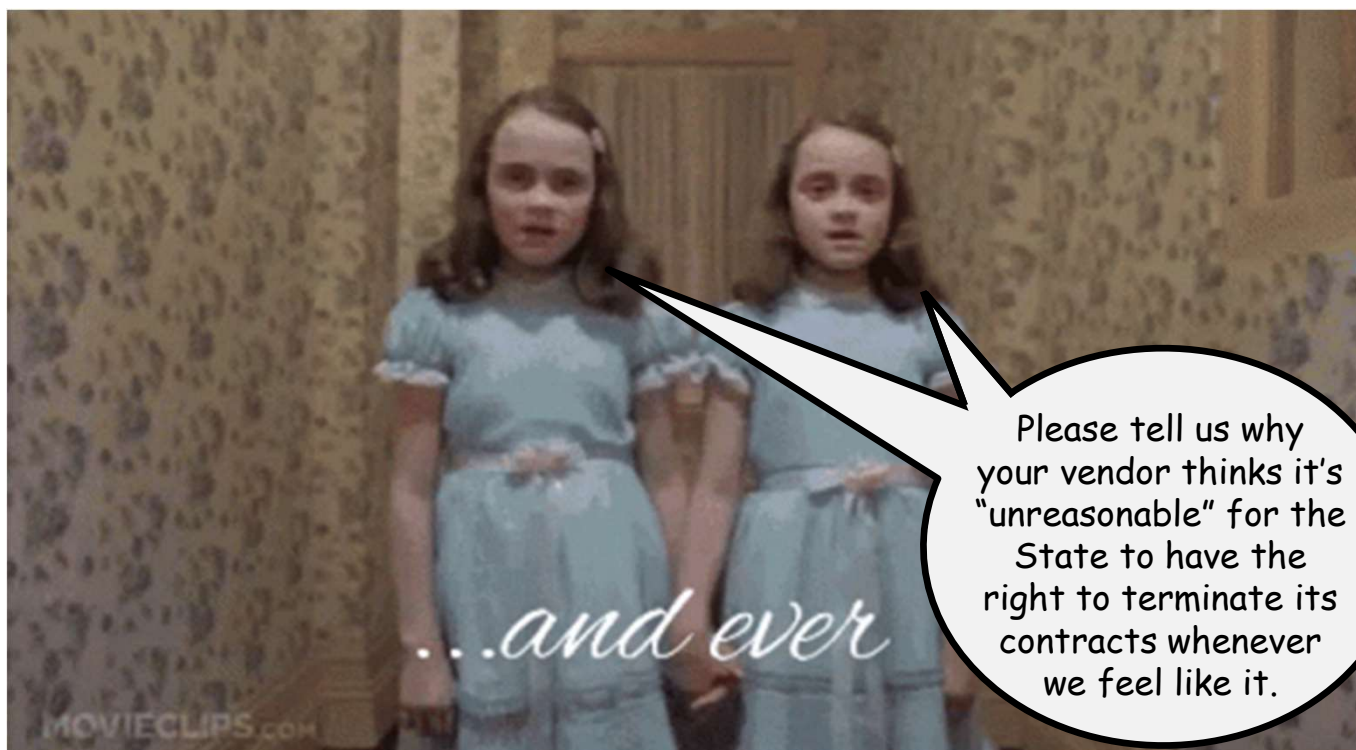


This is IDOA and SBA stressing that their concerns are really, really *grave* ones.





*Really, really, really GRAVE ones. . . .*



This is the Attorney General voicing similar concerns at a different meeting.

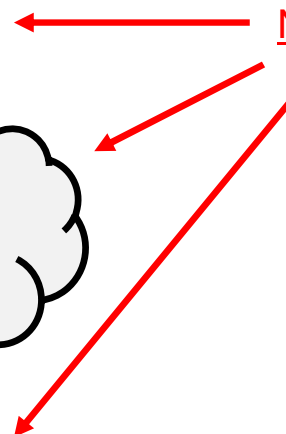


The Indiana Constitution says we can't indemnify.

Yes, "seriously."

More or less...

Telepathic communications.  
Not covered by APRA.



This is IOT waiting for Elevator Car No. 1, in the IGCN, to open after our meeting with the Attorney General. . . .

Installed in 1958 by the vendor whose bid was the lowest by \$237. Never opens or closes at the same speed twice in a row. Not supposed to spew blood.



C'mon, bruh!  
These are  
new shoes!!!



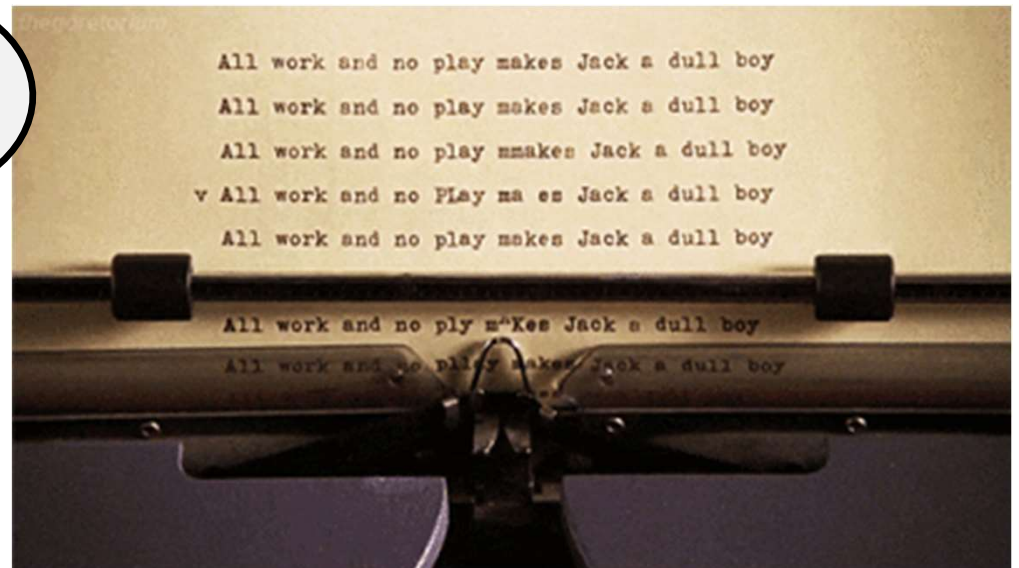
This is IOT Legal making the revisions that our vendor asked for, even though the “approving agencies” advised against it.



This is the IOT Procurement Team beginning to suspect that making the revisions was a bad move.



This is the IOT Procurement Team doing more research to confirm their suspicion.



**Bad News:** heart palpitations, near freakout levels of anxiety. **Good News:** ActiveHealth offers group coaching webinars, to state employees, with tips and tricks for reducing stress. (Sorry, contractors!)





This is IOT Legal analyzing the situation and independently coming to the same conclusion.



This is IOT's relationship with our vendor starting to break down.

Again, avoid vendors that do this.

(Quoting nursery rhymes is almost always a bad sign too.)



This is the IOT Procurement Team discussing the situation with IOT Legal.



And this is IOT suffering harm that we wouldn't have suffered if only IOT Legal hadn't agreed to make the revisions our vendor asked for.






Lastly, this is the Attorney General finding out about it. . . .



Busted state property.  
(IOT will continue to use this door, until 2066,  
when we will swap it out for a slightly-less-busted  
door.)



Now, we know what you're  
thinking. . . .



Please tell us why you think it's okay to store confidential state data on servers that are located in North Korea. . . .

*...and ever*




You

# Basic takeaway from GIFs. . . .

The “approving agencies” need to feel comfortable with the changes that you (and/or your vendors) propose making to the standard language in the State’s boilerplate contract templates in order to approve them. You need to help the “approving agencies” feel comfortable with your proposed changes if you want them to be approved.

*That’s your job.*

A decorative horizontal bar at the top of the slide, consisting of a light blue segment on the left and a darker blue segment on the right.

The easiest way for you to help the “approving agencies” feel comfortable is to change as little as possible in the State’s boilerplate templates.

And the easiest way to set yourself up to change as little as possible is to make three points to your vendors, early on in your negotiations, on why our templates are necessary and what they do for the State.

# Change-as-Little-as-Possible Point 1



“The State depends on its templates because it has limited staff to process hundreds and hundreds of contracts on an annual basis. The State’s templates allow the agencies that are responsible for reviewing and approving our contracts to do their jobs in a reasonable amount of time.”

# Change-as-Little-as-Possible Point 2



“The review-and-approval process for our contracts slows down when state agencies (or their vendors) propose changes – even modest ones – to the standard terms in the State’s templates because it takes time for the approving agencies to consider them.”

# Change-as-Little-as-Possible Point 3



“We need to help the approving agencies understand the thinking behind our proposed changes to the State’s standard terms – AND why our proposed changes are acceptable and appropriate – in order for them to feel comfortable approving our proposed changes.”



## *Moving on to IOT-Specific Stuff. . . .*

Two questions you might have about IT contracts and IOT's review and approval of them:

1. What parts of the State's contract templates is IOT responsible for reviewing *and* approving?
2. What must you do in order to enable IOT to consider and potentially approve changes that you (and/or your vendors) want to make to the template language?


# What IOT Approves 1: *The “IOT Paragraph”*

**27. Information Technology Enterprise Architecture Requirements.** If this Contract involves information technology-related products or services, the Contractor agrees that all such products or services are compatible with any of the technology standards found at <https://www.in.gov/iot/2394.htm> that are applicable, including the assistive technology standard. The State may terminate this Contract for default if the terms of this paragraph are breached.

# What IOT Approves 2: *The Cloud Terms*

“Cloud services,” for the purpose of IOT contract approvals, means any hosting services that occur outside of an environment that is controlled by IOT.

IOT must approve all contracts containing such “cloud services”.



The Cloud Terms are “the default.” They are supposed to be used unless there is a good reason for not using them. They will typically be attached to the State’s professional services agreement template as an exhibit.

Changes are permitted. In order to get your proposed changes approved by IOT, however, you will need to identify what they are and explain why they are acceptable for the purposes of your contract. That will allow IOT to do a due-diligence review of what you have in mind AND decide if we agree with you.

What the underlined language in that last slide basically means. . . .

You can't just **ask** IOT if we'll let you make a change to our standard language and expect us to respond with something like: *Yes, please feel free to cut out all the language we came up with to protect the State! No problem! Why would we care?*

You need to **explain** to us why you think we should let you make your proposed change because it won't adversely impact the State and/or it makes sense to do in the context of whatever you've got going on.

If we agree with your reasoning – because you've done a good job of **explaining** it in a way that makes sense to us – your proposed change will probably be approved.

Start by considering the section headings. They should help you understand the basic intent of the section and the importance of its language.

1. Data Ownership
2. Data Protection
3. Data Location
4. Notice Regarding Security Incident or Data Breach
5. Responsibilities Regarding Security Breach
6. Notification of Legal Requests
7. Termination and Suspension of Services
8. Background Checks
9. Access to Security Logs and Reports
10. Contract Audit
11. Data Center Audit
12. Change Control and Advance Notice
13. Security
14. Non-Disclosure and Separation of Duties
15. Import and Export of Data
16. Responsibilities and Uptime Guarantee
17. Subcontractor Disclosure
18. Business Continuity and Disaster Recovery
19. Compliance with Accessibility Standards
20. Additional Terms and Conditions Declaration

# What you should be prepared to do if you want to make changes to the “IOT Paragraph” or the Cloud Terms. . . .

1. **Describe** the product or service that you are buying – and what it will do for your agency – with sufficient detail (but using simple terms) so that the IOT Security Team will have a basic understanding of what is going on, which will help them to legitimately consider whether the changes that you have proposed are acceptable and appropriate under the circumstances.
2. **Identify** the changes that you propose to make. *(IOT prefers redlines made to Word versions of the State’s templates.)*
3. **Explain** why your agency thinks your proposed changes are acceptable and appropriate under the circumstances. *(IOT prefers marginal comments inserted directly into Word versions of the State’s templates.)*
4. **Acknowledge** that your agency is responsible for any harm that comes to the State which would have been prevented if your proposed changes hadn’t been made.



## Part II.

# IOT's Role in the IT Contract Review-and-Approval Process: *Perception v. Reality*



# Special Procurement Requests

## Perception

- My Special Procurement Requests (SPRs) for IT contracts containing **cloud services** are complete as long as the right IOT boxes at the end of the SPR are checked.

# Special Procurement Requests

## Perception

- My Special Procurement Requests (SPRs) for IT contracts containing **cloud services** are complete as long as the right IOT boxes at the end of the SPR are checked.

## Reality

- Supplier completion of the **IOT security questionnaire** will speed IOT's SPR review.
- Access to the questionnaire is available upon request: [contractexceptions@iot.IN.gov](mailto:contractexceptions@iot.IN.gov).

# Types of Approvals

## Perception

- If someone at IOT has approved some aspect of my IT purchase, I can expect approval of the accompanying contract.

# Types of Approvals

## Perception

- If someone at IOT has approved some aspect of my IT purchase, I can expect approval of the accompanying contract.

## Reality

- Operational purchase approval, SPR approval, Archer approval, and any other relevant IOT approvals should be obtained as applicable, **but they don't stand in the place of IOT contract approval.**

# IOT's Review Jurisdiction

## Perception

- IOT reviews every IT contract, including every EULA, every SOW, and every other exhibit during the review and approval process, ensuring our contract has the best legal and operational position possible.

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## Perception

- IOT reviews every IT contract, including every EULA, every SOW, and every other exhibit during the review and approval process, ensuring our contract has the best legal and operational position possible.

## Reality

- IOT selectively reviews IT contracts based on many factors. We rely on agency contract departments, IT staff, and legal counsel to negotiate the terms that suit each deal best.

# Cloud Services & Amendments

## Perception

- IOT's cloud terms are only necessary when a supplier describes its services as cloud services.
- My supplier's on-premise hosting isn't considered "cloud services".

# Cloud Services & Amendments

## Perception

- IOT's cloud terms are only necessary when a supplier describes its services as cloud services.
- My supplier's on-premise hosting isn't considered "cloud services".

## Reality

- To determine if a contract requires IOT's cloud terms, use this definition of "cloud services":
  - ALL hosting outside IOT's data centers;  
and
  - ALL hosting outside IOT's cloud tenants.



# Cloud Services & Amendments

## Perception

- If a contract containing cloud services has been in place without issues for a long time, I don't need to add IOT's cloud terms when I amend the contract.

### **OR**

- Since my existing on-prem services contract was approved by IOT, I don't need to include IOT cloud terms when I amend it to migrate services to the cloud.

# Cloud Services & Amendments

## Perception

- If a contract containing cloud services has been in place without issues for a long time, I don't need to add IOT's cloud terms when I amend the contract.

**OR**

- Since my existing on-prem services contract was approved by IOT, I don't need to include IOT cloud terms when I amend it to migrate services to the cloud.

## Reality

- All existing contracts containing **cloud services** but not **IOT cloud terms** should be amended to add IOT cloud terms. The same is true for existing contracts being amended to **add** cloud services.

# Cloud Services & Amendments

## Perception

- Existing software contracts can be extended without regard to the fact that the State has a new software QPA supplier.

# Cloud Services & Amendments

## Perception

- Existing software contracts can be extended without regard to the fact that the State has a new software QPA supplier.

## Reality

- Existing software contracts should be evaluated in light of the software titles and discounts offered under the new software QPA.
- Offerings have been expanded and minimum discounts have been negotiated.
- If you are extending a software contract, expect IOT to ask if you have engaged the QPA supplier.

# Supplier Access to IOT Standards

## ***Process Update***

- ❑ Suppliers must create an Access Indiana account to access the “IOT Standards” site linked in IDOA’s contract template.
- ❑ The site contains a link to an NDA form to be completed by suppliers.
- ❑ Once the supplier has submitted the form, and it has been approved by IOT, the supplier will receive an email describing how to access the IOT Standards.

# Steps for Success

***Requests to  
modify or delete the IOT paragraph,  
modify or waive incorporation of the IOT cloud terms,  
or replace IOT's cloud terms with a vendor's cloud terms  
should be sent to  
[ContractExceptions@iot.IN.gov](mailto:ContractExceptions@iot.IN.gov).***

# Steps for Success

*Notice of plans to  
modify or delete  
the cyber-liability insurance provision  
sent to*

**[ContractExceptions@iot.IN.gov](mailto:ContractExceptions@iot.IN.gov)**

***may help avoid contract review/approval delays.***

# Steps for successful IOT contract review and approval

1. Do I want to modify or delete the IOT paragraph? If so:
  - Have I engaged IOT via [ContractExceptions@iot.IN.gov](mailto:ContractExceptions@iot.IN.gov)?



# Steps for successful IOT contract review and approval

1. Do I want to modify or delete the IOT paragraph? If so:
  - ❑ Have I engaged IOT via [ContractExceptions@iot.IN.gov](mailto:ContractExceptions@iot.IN.gov)?
2. Does my contract include cloud services? If so:
  - ❑ Have I included the **IOT cloud terms**?
  - ❑ Have I asked the vendor to engage **IOT's security questionnaire process** for cloud services?

# Steps for successful IOT contract review and approval

1. Do I want to modify or delete the IOT paragraph? If so:
  - ❑ Have I engaged IOT via [ContractExceptions@iot.IN.gov](mailto:ContractExceptions@iot.IN.gov)?
2. Does my contract include cloud services? If so:
  - ❑ Have I included the **IOT cloud terms**?
  - ❑ Have I asked the vendor to engage **IOT's security questionnaire** process for cloud services?
3. If I want to modify the IOT cloud terms, elect not to use them at all, or substitute a vendor's cloud terms instead:
  - ❑ Have I engaged IOT via [ContractExceptions@iot.IN.gov](mailto:ContractExceptions@iot.IN.gov)?

# Thank you for helping us help you!



Definitive proof that homicidal maniacs are reincarnated as cats. . . .



# ETHICS IN STATE CONTRACTING



Sean Gorman, Doreen Clark and Mark Mader,  
Indiana Office of Inspector General

# Today's Agenda

1. Overview of OIG Duties and Jurisdiction
2. Specific Ethics Rules and Examples
  - Gifts
  - Conflicts of Interests in Decisions and Votes
  - Conflicts of Interests in Contracts
  - Post-Employment Restrictions
3. Potential Penalties for Violations
4. Reminder on the Importance of Ethics



# Office of Inspector General Duties:

1. Establish the Code of Ethics
2. Educate/Advise
3. Investigate
4. Adjudicate



# ADVICE:

## 1. Agency Ethics Officer

- Appointed by and within each agency
- Familiar with your agency's internal policies and duties

## 2. Informal Advisory Opinions

- Fast guidance from OIG attorney
- Confidential

## 3. Formal Advisory Opinions

- Public
- Conclusive
- Issued by the State Ethics Commission



# OIG and Code of Ethics JURISDICTION:

State Government

Executive

Officers

Employees

Special State Appointees

People with business  
relationship





# THE CODE OF ETHICS:

Indiana Code § 4-2-6-1 to 17

42 IAC § 1-1-1 to 1-11-1



# If you have Final Purchasing Authority:

## Required Financial Disclosure Statements

See IC 4-2-6-8

Who is required to file?

What is “Final Purchasing Authority”?

When to file?



# THE CODE OF ETHICS:

- **Gifts**
- **Donor Restrictions**
- **Honoraria**
- **Political Activity**
- **Moonlighting**
- **Conflicts of Interests; Decisions and Voting**
- **Conflicts of Interests; Contracts**
- **Additional Compensation**
- **Bribery**
- **Benefitting from Confidential Information**
- **Divulging Confidential Information**
- **Use of State Property**
- **Ghost Employment**
- **Post-Employment**
- **Nepotism**



# Gifts

## 42 IAC 1-5-1

### TO WHOM

You, your spouse, and your child (unemancipated)

### WHAT

Gift, favor, service, entertainment, food/drink, travel expenses, registration fees

### FROM WHOM

Person with a business relationship with your agency OR who is seeking to influence you in your official duties



# Gifts

## 42 IAC 1-5-1

### EXCEPTIONS

Memento/souvenir of nominal value  
Relative or ongoing social relationship

### WAIVERS

Agency's appointing authority can waive rule  
Must be consistent with public interest



# Example

A contractor at your agency has offered you two extra Pacers tickets for an upcoming game. Can you accept and attend the game?



# Example

Can you accept a door prize that you won in a drawing at a work conference that you attended?



# Conflicts of interests Contracts

## CODE

IC 4-2-6-10.5

## What the Code States

A state employee may not *knowingly* have a **financial interest in a contract** made by **any** state agency.

## How the Code defines a Financial Interest

An *interest* in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; **or** involving property or services





# Conflicts of interests

## Contracts

### IC 4-2-6-10.5

#### Exception:

An employee *may* have a financial interest in a contract made by a state agency so long as the employee:

(1)

Does not *participate in* or *have official contracting responsibility* for the contracting agency.

(2)

Files a written disclosure form with our office **PRIOR** to the execution of the contract with the agency.



# Conflicts of interests Contracts IC 4-2-6-10.5

## *Exception- Disclosure Form*

Unless the state employee *files a written disclosure* form with the OIG *prior* to the execution of the contract between the state agency and the vendor, the exception to the rule will not be met and having a financial interest in a state contract will be in violation of the rule.



# Conflicts of interests

## Contracts

### IC 4-2-6-10.5

#### *Concerns Regarding the Exception*

**Question:** How does 10.5's exception apply to state employees who do not have any contracting authority within their state agency but are seeking outside employment with vendors who have an established contract with a state agency?

**Answer:** State employees **cannot accept compensation derived from a state contract** from the vendor where a contract was already established, and the employee did not file a written disclosure form **prior** to the execution of the contract with the state agency



# Example

- You work for state government and you are seeking a second job to supplement your income.
- You have been offered employment as a cafeteria worker for Spectrum Health.
- Spectrum Health is a vendor and has a contract with another agency, which was established prior to your state employment
- You do not have contracting authority with your agency, but because the contract was already established, **you cannot accept any compensation from Spectrum that is derived from an agency contract.**



# Conflicts of Interests Decisions and Votes

CODE

IC 4-2-6-9

What the Code  
States

Prohibits a state employee from **participating in any decision or vote, or matter related to that decision or vote**, if the employee has knowledge that various persons may have a financial interest in the outcome of the matter.



# Conflicts of Interests Decisions and Votes IC 4-2-6-9

*Whose financial interest triggers the prohibition?*

1. **The State Employee**  
*such as if the state employee has a personal business*
2. **An Immediate Family Member**
3. **A Business Organization in which the State Employee is serving as an officer, director, member, trustee, partner or employee**
4. **An organization with whom the state employee is negotiating or has an arrangement concerning prospective employment**



# Example

In your role as a state employee, you determine which nonprofit organizations can receive certain funds that are available through your agency.

Once you select the list of nonprofit organizations that qualify for the program, your agency will contract with these nonprofit organizations to provide funds for a specified duration of time. You also have the discretion to determine how much funds that the nonprofit organization can receive.

You have been seeking a second job while working with your agency and have recently received a job offer for a leadership role for ABC, a nonprofit organization that your agency has contracted with for two years (prior to your employment at the agency). The nonprofit organization is still under contract to receive funds from your agency.

**Is there a conflict of interests?**



# Conflicts of Interests Decisions and Votes IC 4-2-6-9

A state employee **must**:

Notify the agency's authority and ethics officer in writing to either

*1. Seek a formal advisory opinion from the Commission*

Commission will assign the particular matter to another person and implement the necessary procedures to screen the employee seeking and advisory opinion from involvement in the matter, or

Make a written determination that the interest is not so substantial that the commission considers it to likely affect the integrity of the services that the state expects from the employee.

**OR...**





# Conflicts of Interests Decisions and Votes IC 4-2-6-9

*2. File a written disclosure with our office.*

*What is required of the Written Disclosure?*

- Details the conflict of interests
- Describes and affirms the implementation of the screen established by the ethics officer
- Signed by the state employee and the agency's ethics officer
- Filed no later than seven days after the conduct that gives rise to the conflict



# CRIMINAL CONFLICTS OF INTERESTS

- Criminal Conflicts of Interests statute can be found in IC § 35-44.1-1-4
- The criminal statute prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency.
  - **Example:** An INDOT employee who has a side job of developing software for various companies and decides to contract with his own agency (INDOT) to sell his own software the agency.
- Level 6 Felony



# Post-employment

## Cooling Off Requirement

- “Revolving door” – IC 4-2-6-11(b)
- Lobbying
- Negotiation/administration of state contract
- Regulatory/licensing decisions
- 365 days

## Particular Matter Restriction

- 12 “particular matters” - IC 4-2-6-11(a)
- Prohibits former employees from working on opposing side of matters they worked on for State
- “Personal and substantial” participation
- Life of matter (not limited to one year)



# Post-employment Cooling Off Period IC 4-2-6-11(b)

For 1 year after leaving state employment, you CANNOT:

1. Serve as a lobbyist



# Example

You are leaving state government and your new employer wants you to register as a lobbyist to lobby the Indiana and Ohio legislatures. Can you do so without waiting for one year from the date of leaving state employment?



# Post-employment Cooling Off Period IC 4-2-6-11(b)

For 1 year after leaving state employment, you CANNOT:

2. Work for an employer if you negotiated or administered a contract with the employer & you had discretionary decision-making affecting the negotiation or administration of the contract.



# Example

You serve as an assistant general counsel for your agency and frequently attended meetings with entities your agency served. You had no direct involvement with an entity who has encouraged you to apply for a position with the entity. You rarely work on contract for your agency, but you are aware of the contracts and sometimes review entities' contracts and make recommendations to the general counsel. Other than making recommendations regarding the contract's completeness, you have no authority to execute, negotiate or administer an entity's contract. Must you wait for a year before accepting employment from the entity?



# Post-employment Cooling Off Period IC 4-2-6-11(b)

For 1 year after leaving state employment, you CANNOT:

3. Work for an employer if you made a regulatory or licensing decision that directly applied to the employer.





# Example

You work for an agency that makes regulatory or licensing decisions in the industry which it regulates. In your role, you make decisions that apply to the regulated industry in general but not to any specific entity. Must you wait a year before accepting employment from an entity in the industry your agency regulates?



# Post-employment Particular Matter Restriction IC 4-2-6-11(c)

Types of  
Particular  
Matters

1. Application
2. Business transaction
3. Claim
4. Contract
5. Determination
6. Enforcement proceeding
7. Investigation
8. Judicial proceeding
9. Lawsuit
10. License
11. Economic development project
12. Public works project



# Example

You ask for an Informal Advisory Opinion from the OIG who advises you that your employment with the XYZ Company is prohibited by the Cooling Off or Personal Matter Restrictions: What to do?



**Do it anyway and hope you don't get caught?**



# Ethics Violations; penalties; sanctions IC 4-2-6-12

1. Civil penalty 3X value of benefit.
2. Cancel contract
3. Bar from entering contract
4. Restitution or disgorgement
5. Reprimand, suspend or terminate
6. Bar future state employment
7. Recommend impeachment
8. Revoke license or permit
9. Bar from obtaining license or permit
10. Revoke lobbyist registration
11. Bar future lobbying activity



**Seek a Formal Advisory Opinion and hope the  
OIG IAO was not correct?**



# Post Employer Waiver

## IC 4-2-6-11(g)

Appointing Authority may waive Cooling Off and Particular Matter Restrictions

- (1) Signed by both appointing authority and ethics officer.
- (2) Must include:
  - a. Whether employee's job duties involved substantial decision making.
  - b. Nature of duties for prospective employer.
  - c. Substantial contact with former agency.
  - d. Consistent with public interest.
  - e. Employee hardship if denied.
- (3) Filed and presented to SEC by appointing authority.
- (4) Must be obtained before beginning new employment.



# For the Attorneys: Be mindful of the Rules of Professional Conduct!

See Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

The Supreme Court Disciplinary Commission can offer informal guidance on the application of the rules to a set of circumstances in much the same way that OIG does for the State Code of Ethics. <https://www.in.gov/courts/discipline/guidance/>

March 2023: Supreme Court Disciplinary Commission Opinion # 1 - 2 3:  
Detecting and Navigating Imputed Conflicts of Interests of Current and Former Government Officials, Lawyers, and Employees -  
<https://www.in.gov/courts/discipline/files/dc-opn-1-23.pdf>

OIG does not have jurisdiction to provide guidance on this or other ethical obligations for attorneys under the Rules of Professional Conduct





# For the Attorneys:

When the lawyer finds:

1) The lawyer was personally and substantially involved in the matter in the lawyer's prior governmental role, AND the lawyer has not received informed consent from the agency to the representation (reversed if moving from private to public)



# For the Attorneys:

2) The lawyer, while a government employee, learned damaging confidential information about a person (who has interests adverse to the new client) that will be materially damaging to the person in the new matter



# For the Attorneys:

3) The representation would involve the revelation of information that all attorneys are prohibited from disclosing under Indiana Rules of Professional Conduct 1.9(c) (Duties to former clients)



# Appearance of Impropriety

**Technical compliance with the Code notwithstanding:**

**Consider any appearance of impropriety based on your position at your agency and your specific circumstances.**



# CONTACT US:

## INDIANA OFFICE OF INSPECTOR GENERAL

[www.in.gov/ig](http://www.in.gov/ig)

(317) 232-3850

[info@ig.in.gov](mailto:info@ig.in.gov)



# AGENCY CONTACT INFORMATION

GENERAL QUESTIONS RELATING TO THE PRESENTATIONS: [contracts@atg.in.gov](mailto:contracts@atg.in.gov)

AGENCY INQUIRIES MOVING FORWARD SHOULD BE DIRECTED TO:

DOA: [tglickman@idoa.in.gov](mailto:tglickman@idoa.in.gov) or [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov)

OAG: [contracts@atg.in.gov](mailto:contracts@atg.in.gov)

SBA: [indianastatebudgetagency@sba.in.gov](mailto:indianastatebudgetagency@sba.in.gov)

IOT: [jehrenberg@iot.in.gov](mailto:jehrenberg@iot.in.gov) or [tmesser@iot.in.gov](mailto:tmesser@iot.in.gov)

OIG: [info@ig.in.gov](mailto:info@ig.in.gov)

