MEMORANDUM

FROM: Indiana Department of Administration
              Lesley A. Crane, Commissioner

DATE: April 23, 2021

RE: Electronic Approval of State Contracts

Purpose

The purpose of this memorandum is to provide state agencies with the statutory basis and legal analysis regarding the electronic approval of state contracts subject to Ind. Code § 4-13-2-14.1. Additionally, it strives to provide guidance as to how the State's electronic contracting process works. This memorandum has been updated for clarity and to incorporate information on the new eSignature tool, DocuSign.

Background

The Uniform Electronic Transactions Act is a uniform statute designed to bring state law into the electronic commerce era. Indiana adopted the Uniform Electronic Transactions Act at Ind. Code ch. 26-2-8 in 2000. Indiana Code § 26-2-8-202 authorizes governmental agencies to determine whether, and the extent to which, they will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.[1]

Electronic records, electronic signatures, and electronic contracts are recognized and enforceable under the law. Indiana Code § 26-2-8-106 provides the following:

  (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
  (b) A contract may not be denied legal effect or enforceability solely because an electronic record or electronic signature was used in its formation.
  (c) If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law.

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[1] Indiana Code § 26-2-8-102 (10) defines an "Electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."

(d) If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

While most private contracts need only the parties to sign the contract for it to be valid, Ind. Code § 4-13-2-14.1 (a) requires that "[a] contract[2] to which a state agency is a party must be approved by ... the Indiana department of administration ... the budget agency ... and the attorney general." In addition, Ind. Code § 4-13.1-2-2 provides that the Indiana Office of Technology (IOT) shall "[r]eview ... proposed contracts relating to information technology at the request of the budget agency," and the Budget Agency has requested that IOT review all such contracts.

Indiana Code § 4-13-2-14.1(c) provides:

The Indiana department of administration may adopt rules under IC 4-22-2 to provide for electronic approval of contracts. Electronic approval may include obtaining the equivalent of a signature from all contracting parties using an electronic method, so long as the method allows the party to read the terms of the contract and to manifest the party's agreement to the contract by clicking on an "ok," an "agree," or a similarly labeled button or allows the party to not agree to the contract by clicking on a "cancel," "don't agree," "close window," or similarly labeled button. Rules adopted under this subsection must provide for the following:

(1) Security to prevent unauthorized access to the approval process.
(2) The ability to convert electronic approvals into a medium allowing persons inspecting or copying contract records to know when approval has been given.

For contracts subject to Ind. Code § 4-13-2-14.1, the State will send and accept electronic records of contracts and electronic signatures under Ind. Code § 26-2-8-202. The following process is the only approved process for the electronic signing and approval of state contracts, and its standards are designed to promote consistency and interoperability for the State. Ind. Code § 26-2-8-203. A contract created under these procedures is deemed in writing and will not be denied legal effect or enforceability solely because it is in electronic form. This memo will govern until such time as the Indiana Department of Administration (IDOA) may adopt rules as contemplated by Ind. Code § 4-13-2-14.1(c).

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[2] "Contracts" include grants, and when used in this document, "contractor" also means "grantee." While "contracts" also include leases and some other real property transactions, the process described in this document is not available for certain real property transactions or any other transactions which may require recordation or notarization.

**Use of the PeopleSoft Financials
Supplier Contract Management
Module**

All state contracts that are routed for electronic approval will use the PeopleSoft Financials Supplier Contract Management (SCM) module, or just "SCM," to which it is commonly referred. PeopleSoft Financials serves as the State's official book of record and is a State-owned and supported system. Through IOT, security measures are in place to ensure the preservation of all recorded data with detailed plans for data disaster recovery, including hot and cold sites.

The State has created templates for state contracts and grant agreements in SCM. Personnel from IDOA/IOT update these templates with autonomy and without intervention by agencies. Contract templates that have been form-approved by the Attorney General will also be created in SCM. Under SCM, contractors, vendors, and all state agencies can review changes made to the templates.

eSignature[3]

DocuSign is the signature tool in SCM to sign contract documents electronically ("eSignature"). Indiana selected DocuSign as its means to comply with Ind. Code ch. 26-2-8. The State made this selection based on several factors, including:

- Security;
- No cost for contractors;
- Ease of use; and
- Compliance with Ind. Code § 4-13-2-14.1 and Ind. Code ch. 26-2-8.

Security and the eSignature Procedure

A PeopleSoft user ID and password is required for each individual who will access contract documents in SCM, and any actions taken by an individual are documented and stored in SCM. All users granted access to SCM administrator functions, including sending SCM documents for signature, are also required to have a DocuSign account/identity in order to obtain contract signatures.

After an SCM administrator creates a document under PeopleSoft SCM, it assigns

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[3] The system selected does **not** utilize "digital signatures" as defined by Ind. Code § 5-24-2-1.

the document for eSignature. IDOA has selected two identity verification tools for an SCM administrator to choose from - text or access code verification. Individuals which have been designated by an SCM administrator to sign contracts will receive a signature-request notification via email from DocuSign. These individuals are required to verify their identity via text or access code as defined by the SCM administrator.

The Signer is allowed access to a view of the SCM document through DocuSign with no mechanism to perform or save edits of any kind. Using signature tags embedded within the SCM templates, the contract document will require the signer to affix a signature (according to the signer name assigned by the SCM administrator), title, and date/time stamp in the designated areas only.

The contractor agrees to conduct business electronically by the following statement which immediately follows the Non-Collusion and Acceptance clause and immediately precedes the designated eSignature area:

> *I agree, and it is my intent, to sign this contract electronically, and that my signing and submitting this contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the* Active Contracts *Database.*

Completion of the Contract

The SCM administrator receives notification from DocuSign each time an individual opens a document for review, each time an individual completes the signing procedures, and the moment all requested signatures are in place.

Further, a DocuSign Envelope is created with each contract that contains recipient information, documents, document fields, and timestamps tracking delivery progress, as well as information about the sender, security and authentication information, a certificate of completion, and a digital seal. In addition to being securely stored in DocuSign, these details are shared with SCM and documented in the PeopleSoft application and cross-referenced by an Envelope ID embedded on the document.

With the eSignatures in place, the SCM administrator routes the document for approval, using the electronic process by the necessary oversight agencies (IOT if applicable, IDOA, SBA, and OAG) through a predetermined workflow based on the document requirements.

When the required signatures and approvals are complete, the SCM administrator executes and dispatches the contract. An automatic process in the system will select all newly executed contracts and send a copy to the IDOA Contract Division.

The IDOA Contract Division will upload the contract to the State's Transparency Portal for public view.