

NIGP

Global Best Practice

CONTRACT CLOSEOUT

This practice is directed to procurement professionals. However, there may be other stakeholders involved with the administration of the contract, each with various responsibilities for contract closeout. All stakeholders should be made aware of their responsibilities. Other stakeholders may include:

- Senior management, elected officials.
- End users.
- Government employees.
- Program staff, e.g., Small Business or Minority, Women, and Disadvantaged Business Enterprise (MWDDBE) Office.
- Another procurement entity.
- Supplier or Contractor.

STANDARD

Every contract requires contract closeout. The contract closeout process allows the entity and contractor to officially consider a contract closed. The simplest form of a contract closeout may be performed automatically and may not require a formal checklist to complete the process. Well-executed contract administration, including a complete and accurate procurement or contract file, is essential to successful contract closeout.

Definition

Contract Closeout: A final set of actions taken during the contract administration phase that establishes each party has fully satisfied its obligation to the other according to the contract. This includes the completion of all administrative actions, resolution of all disputes, and payment of all outstanding financial obligations.

Element 1: Start with the end in mind.

The procurement professional should consider closeout requirements throughout the procurement planning process, including:

- Ensuring the solicitation document and the resulting contract state assigned closeout roles and responsibilities and include contract closeout requirements, e.g., expected deliverables.
- Identifying potential scenarios for contract closeout.
- Developing a plan for contract closeout from the development of the solicitation through the resulting contract and contract administration phase.
- Identifying potential renewals or extensions of the contract and any financial obligations.
- Creating a checklist based on the contract to specify tasks and associated responsibilities for closeout.

Element 2: The success of contract closeout depends on accurate and thorough documentation in the contract file.

The contract file consists of a set of documents with accurate and pertinent information that must be retained throughout the contractual period. The acceptance of deliverables by the requisite entity authority should be documented and included in the contract file. The closeout document may include information that finalizes and releases both parties, i.e., lien release, from all legal and contractual obligations. The contract file will differ according to what is being procured and how it is being procured, and may include:

- Standard contracts.
- Amendments and change orders.
- Purchase orders.
- Price agreements.
- Requirements contracts.
- Receiving report.
- Plans, designs, specifications, and as-builts.

Element 3: Procurement, in collaboration with the client department, designated contract administrator, and other stakeholders, is responsible for ensuring contract closeout.

Primary roles and responsibilities of stakeholders during the contract closeout process may depend on the entity's:

- Procurement policies.
- Operating procedures.
- Organizational structure, i.e., centralized, decentralized, hybrid.
- Organizational culture.
- Type and complexity of the contract.

In general:

- The procurement professional closes the contract file through:
 - Validation (of documentation and activities)
 - Confirmation (of performance, delivery, payment)
 - Delegation (of roles and responsibility to complete contract closeout activities)
 - Documentation of lessons learned

Contract closeout, for example, of a standard purchase order, may occur automatically, e.g., through an ERP validation feature or function.

Element 4: The procurement professional should consider factors that may impact the timing of and resources needed for contract closeout.

The procurement professional should review the contract to ensure that all open items are resolved. The time and level of effort to accomplish contract closeout depends on the complexity and dollar value of the contract.

For complex procurements, contract closeout may require a formal process, particularly for procurements involving capital projects and extensive service provisions. For routine procurements, contract closeout may consist of an automated process.

Complex procurements may include information technology, specialized equipment, construction services, or service contracts. The timing and resources needed for closeout of complex procurements may be impacted by:

- Type of construction project delivery method, e.g., Design-Build, Design-Bid-Build, Construction Manager at Risk, Alternate Construction Delivery Method.
- Number and type of stakeholders involved.
 - Contractors, sub-contractors, e.g., lien releases
 - Social service professionals, e.g., transitions of care and records
 - Boards, commissions, councils, e.g., approvals
- Required training of entity personnel during contract transition.
- Entity structure.
- Entity systems/processes.
 - Technology adoption
- Capability and capacity of the entity.
- Funding source, e.g., state, federal, or grants.
- Reporting requirements.
- Security/privacy Issues
- Required exchange of personnel or surrender of equipment.
- Requirement for recurring services.
- Community outreach or feedback needed.
- Required notice of termination/expiration to internal clients and suppliers.
- Return of any unused encumbered funds.
- Release of retainage/bonds.
- Required documentation, e.g., reports, deliverables, written warranties, acceptance of deliverables, performance feedback.
- How a contract ends such as:
 - Anticipated, e.g., expected expiration at the end of contract term, transition to new contract (incumbent or new supplier)
 - Not anticipated, i.e., unexpected termination of the contract, e.g., default by current supplier
 - Termination for Cause
 - Termination for Convenience



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Specific considerations for IT closeout include:

- Transfer of data to the entity, if required by the contract.
- Cancellation of access, withdrawal of permission, e.g., password changes.
- Access to, or copies of, confidential data or information.
- Ensuring that data is secure, e.g., deliberately, permanently, and irreversibly removing or destroying the data (Media sanitization, i.e., NIST 800-88).
- Confirmation of existing systems for integrations impacted by contract.
- Verification of security and ownership of source code.

Specific considerations for construction closeout (before final payment) may include:

- Punch list completion.
- Subcontractor and supplier payments, i.e., lien releases.
- All relevant documentation, insurance, certificates, commissioning of project, warranties, as-builts.
- Confirmation that training has occurred.
- Confirmation that turnover of ownership and necessary documents have occurred.
- Release of retention.

Specific considerations for services may include:

- Removal of contractor access (building/network/passwords).
- Return of equipment/supplies (could be both parties).
- Transition between suppliers, e.g., does the current contractor need to train the new contractor?

Specific considerations for professional services may include:

- Client transition plan, i.e., personal handoff of mental health patients, justice-related clients, foster care.
 - Consideration for the individual's circumstances, e.g., client's access to services through transportation
 - Records, background checks, and access to buildings and systems
- Client sensitive data recovery/destruction plan.
- Communication plan (client/internal).
 - Use of local media
 - Update entity website and other public-facing communication
- Deliverables, written warranties, acceptance of deliverables, performance feedback.

Tips for contract closeout:

- Document contract performance and activity throughout the life of the contract.
- Begin contract closeout early enough to allow adequate time to develop a solicitation for a new contract.

Element 5: Successful closeout considers contract type, funding, special documentation, and other factors.

The utilization of a contract closeout checklist, which may include the following, is a best practice:

- Special considerations of contract closeout based on the type of contract, e.g., construction (punch out lists), goods, services, information technology (protect data), emergency management, and specific funding requirements, for example, Federal Emergency Management Agency (FEMA), Federal Transit Administration (FTA), The United States Department of Housing and Urban Development (HUD).
- Entity payment in full to contractors.
- Deobligation of all excess funds on the contract.
- Settlement of property rights to the satisfaction of all parties.
- Finalization of administrative actions.
 - Documentation and closure of all outstanding matters, including satisfactory performance, warranties, technical data requirements, and patents
 - Notice by Procurement to end users regarding the status of a contract, e.g., when a contract is due to terminate or when a new contract is in place

The following areas and questions should be considered in conjunction with closeout activities:

Administrative

- Is the contract file complete, and does it conform to regulations governing contract administration as specified by the public entity?
- If the contract file consists of multiple files, have they been sequentially numbered and identified?
- Does the contract file include the file of the contracting officer and the contracting officer's representative?
- Did the contract specify a period of performance; and, if yes, has that period of performance ended?
- Are all file documents signed with original signatures? This includes invoices/vouchers, letters to the contractor, memoranda, official and correspondence.
- Is the deobligation of funds complete, if required?
- Are all change orders defined and included in the procurement file?
- Are all final determinations complete?
- Have all optional provisions expired?
- Are there any time extensions pending?
- Are all modification documents signed?

Deliverables

- Is the final receiving report signed and dated?
- Did the contracting officer representative certify that all deliverables have been received and accepted?

Payments and Invoices

- Are all disallowed payments, performance, deliverables, or suspended costs resolved?
- Is all reconciliation completed in conjunction with a financial report to verify that all payments have been paid?
- Have any refunds, rebates, or credits been annotated in the procurement file?
- Are all excess funds, such as unliquidated obligations, verified, and submitted to the Finance Department?

Property

- Has the property inventory been received from the contractor?
- Has there been an accounting of all entity-owned property, real or personal, either furnished by the entity or acquired by the contractor for the account of the entity?
- Has appropriate disposal action been taken upon physical completion of the contract/delivery order?
- Has there been a final disposition of entity-furnished property?

Element 6: Tools and activities are useful in conducting the contract closeout process.

When conducting a contract closeout, the following tools or activities may be used:

- Guidance, e.g., training, meeting, or physical guide stating expectations to suppliers, clients, and other stakeholders
- A checklist for contract file documentation, e.g., amendments, contractor performance, non-disclosure statements
- Stakeholder engagement, i.e., bring stakeholders together to review contract performance to elicit feedback and extract lessons learned, e.g., emergency management
- Project management tools, e.g., RACI (responsible, accountable, consulted, and informed) may be used as a separate project management tool
- Contract or document management software system

Background

Contract closeouts should be conducted to verify all contractual obligations are completed and documented. Because contract closeout is the final set of actions during the contract administration phase, it can also be used to evaluate the contract and contractor/supplier performance, providing feedback and lessons learned for establishing a new contract.

At the onset of the procurement planning process for goods and services, it is important to identify contract closeout expectations and responsibilities of all stakeholders, including end users and suppliers.

Lack of planning for contract closeout can lead to negative consequences such as improper access to confidential data and systems by the former contractor or its subcontractors.



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