Fiscal Year 2020
Advanced Contract Management

Contracts and Procurement (CNP) Staff

UT System Business Affairs Training Session

August 2020

Advanced Contract Management Objectives

- Review FY 2019 Audit findings and recommendations

- Review implementation status of audit recommendations and legislative-driven changes

- Departmental Contract Administrators (DCAs) roles and responsibilities in
  - Contract Formation
  - Contract Monitoring
  - Contract Management
  - Contract Close-out

An Audit on Selected Contracts at The University of Texas System

The System Administration's procedures address the applicable contract-related requirements of *Texas Education Code*, Section 51.9337, and *Texas Government Code*, Chapter 2261, Subchapter F.

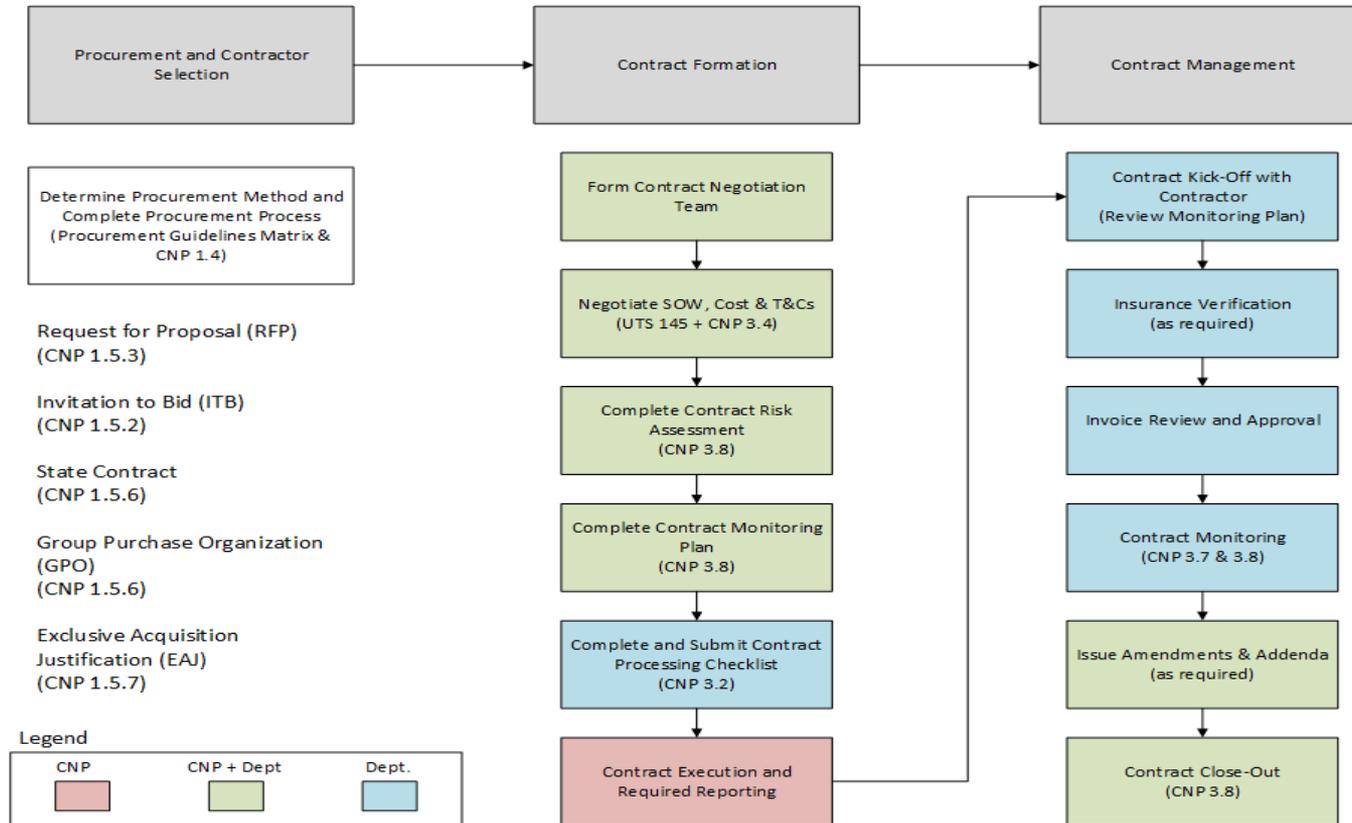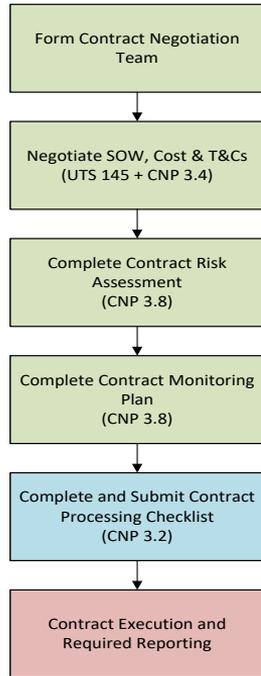| Procurement & Contractor Selection | Contract Formation | Contract Monitoring |

FY 2019 Audit Findings

- Audits conducted by the State Auditor's Office and UT System Administration Internal Audit Office concluded that improvements are required in "monitoring" of contracts

- UT System Administration Internal Audit Office made the following recommendations:
  - Procure and implement a contract management software solution *(in progress)*
  - Evaluate integration with PeopleSoft to manage contract spend *(under consideration)*
  - Enhance training to assure that DCAs fully understand the scope of their responsibilities *(completed)*
  - Review Contract Risk Assessment related to data security and confidentiality *(completed)*
  - Develop a method to ensure that contract requirements are properly managed *(completed)*
  - Develop a method to formalize contract closeout activities *(completed)*

UT System Administration – Procurement & Contracting Process

Procurement and Contractor Selection → **Contract Formation** → **Contract Management**

Determine Procurement Method and Complete Procurement Process (Procurement Guidelines Matrix & CNP 1.4)

Request for Proposal (RFP) (CNP 1.5.3)

Invitation to Bid (ITB) (CNP 1.5.2)

State Contract (CNP 1.5.6)

Group Purchase Organization (GPO) (CNP 1.5.6)

Exclusive Acquisition Justification (EAJ) (CNP 1.5.7)

Legend
CNP	CNP + Dept	Dept.

Form Contract Negotiation Team

Negotiate SOW, Cost & T&Cs (UTS 145 + CNP 3.4)

Complete Contract Risk Assessment (CNP 3.8)

Complete Contract Monitoring Plan (CNP 3.8)

Complete and Submit Contract Processing Checklist (CNP 3.2)

Contract Execution and Required Reporting

Contract Kick-Off with Contractor (Review Monitoring Plan)

Insurance Verification (as required)

Invoice Review and Approval

Contract Monitoring (CNP 3.7 & 3.8)

Issue Amendments & Addenda (as required)

Contract Close-Out (CNP 3.8)

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FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

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Slide 5

DCA Role and Responsibilities: Contract Formation

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Form Contract Negotiation
Team
        ↓
Negotiate SOW, Cost & T&Cs
(UTS 145 + CNP 3.4)
        ↓
Complete Contract Risk
Assessment
(CNP 3.8)
        ↓
Complete Contract Monitoring
Plan
(CNP 3.8)
        ↓
Complete and Submit Contract
Processing Checklist
(CNP 3.2)
        ↓
Contract Execution and
Required Reporting
```

- Coordinates departmental input into contract negotiation

- **Assists in development of Scope of Work and Terms & Conditions; understanding your specific procurement needs is key to contract development and formation**

- **Completes Contract Risk Assessment**

- **Develops a written Contract Monitoring Plan to monitor contract performance over the entire term of the contract**

- Communicates contractual obligations to all parties involved:
  - Internal staff
  - Contractor staff

- Completes and submits Business Affairs Contract Processing Checklist (Checklist)

Contract Formation: Terms & Conditions

- Contract Templates
  - OGC Contract Templates
  - Use of Contractor's Template
    - UT Standard Addendum

- Term: Length of Contract (generally 3-5 years)

- Termination: For Cause, Convenience, Loss of Funding, *Force Majeure*

- Payment: *Texas Government Code,* Chapter 2251

- Governing Law and Venue

- Legal vs. Business Issues

- **Scope of Work: Detailed description of work, milestones, deliverables, schedule, etc.**

- **Cost: Time and Materials, deliverables-based, subscription, expenses (travel), NTE, undetermined**

Contract Formation: Terms & Conditions (cont.) HUB Program Requirements

- Primary Sources
  - *Texas Government Code* Chapter 2161. Historically Underutilized Businesses
  - *Texas Administrative Code* Historically Underutilized Businesses Rules §20.281 - §20.298
  - UTS 137 Historically Underutilized Business (HUB) Program Policy

- Kyle Hayes is HUB Office Liaison to U. T. System CNP and DCAs

- UT System Administration and institutions shall make good faith efforts to meet or exceed annual goals for HUB participation in purchases of and contracts for commodities and services. UT System Administration and institutions shall adopt procedures to ensure…
  - Preparation and distribution of information on procurement procedures in a manner that encourages participation in State contracts by all businesses
  - Identification of potential subcontracting opportunities in all contracts and requirement for a HUB subcontracting plan for contracts of $100,000 or more, where such opportunities exist.

Contract Formation: Terms & Conditions (cont.)
HUB Requirements *continued*

- **HUB Subcontracting Plan (HSP) Good Faith Effort Requirements**
  - Determine if subcontracting opportunities are probable (most times subcontracting opportunities are probable)
  - Good faith effort requirements are generally fulfilled by vendor soliciting three HUBs in each scope of work subcontracted out, awarding all subcontracting opportunities to HUBs, total value of subcontracts awarded to HUBs meets or exceeds state HUB goal, or self-performance (vendor uses its employees and internal resources/materials)

- **HUB Contract Monitoring Requirements**
  - Prime contractors shall maintain business records documenting compliance with the HUB subcontracting plan and shall submit a compliance report to the contracting state agency monthly, in the format required by the comptroller. **The compliance report submission shall be required as a condition for payment**: the monthly progress assessment report (PAR)

Contract Formation: Terms & Conditions (cont.)
HUB Requirements *continued*

- **HUB Contract Monitoring Requirements** *continued*
  - The PAR lists all subcontractors and suppliers used by the vendor to provide product or services to UT System, the total dollar value of contract, amount paid to date, and amount paid to them for the services or products provided month. If the contract was self-performed, the form should indicate *no subcontracting on contract/nonapplicable*. PAR being reviewed against the most up-to-date HUB Subcontracting Plan
  - HUB Office should be notified of any UTS contract amendments or modifications to determine if an updated HUB Subcontracting Plan is required. Any changes or amendments could require a new good faith effort if there are new scopes of work
  - As with UTS contract modifications, if a vendor wants to make changes to its HUB Subcontracting Plan, i.e. the vendor decides to subcontract work out that was previously performed by its employees, or wants to add or change subcontractors, a good faith effort may be required.
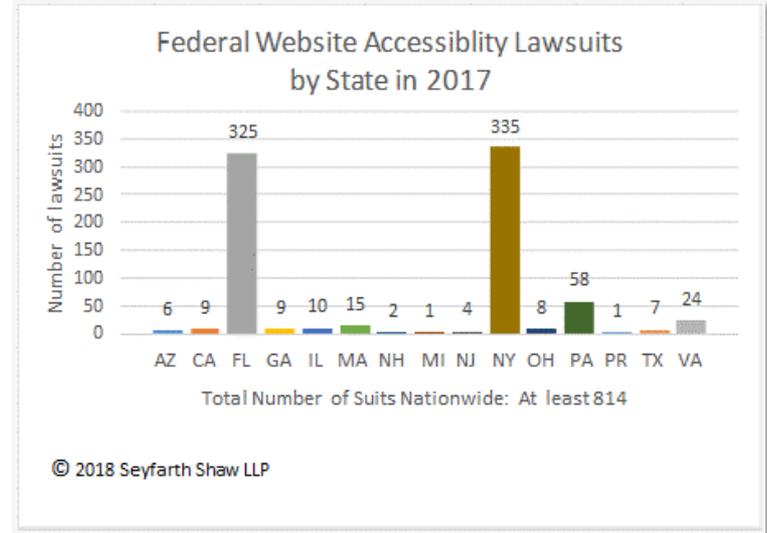
Contract Formation: Terms & Conditions (cont.) Potential Additional Requirements: Accessibility

Preston O. Broadfoot, J.D., Office of the CIO

Why is accessibility important?

- It is a civil right
- Supports mission of the institution
- Compliance with law
- Risk avoidance
  - In 2019, plaintiffs filed at least 2235 federal lawsuits.[1]
  - The DOJ has withdrawn previously announced Advance Notices of Proposed Rulemaking (ANPRMs). Lack of clear rules will likely lead to more litigation and inconsistent judicially-made law.

Federal Website Accessiblity Lawsuits by State in 2017

Number of lawsuits — AZ 6, CA 9, FL 325, GA 9, IL 10, MA 15, NH 2, MI 1, NJ 4, NY 335, OH 8, PA 58, PR 1, TX 7, VA 24

Total Number of Suits Nationwide: At least 814

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https://www.jacksonlewis.com/sites/default/files/docs/2019_EndOfYear_WebAccessibilityLawsuit_RecapReport.pdf

Contract Formation: Terms & Conditions (cont.) Additional Requirements: Accessibility Definitions

- **Accessible**: [d]escribes an electronic and information resource that can be used in a variety of ways and (the use of which) does not depend on a single sense or ability

- **Electronic Information Resources** ("EIRs"): [i]ncludes information technology and any equipment or interconnected system or subsystem of equipment used to create, convert, duplicate, or deliver data or information
  - AKA: Information and Communications Technology (ICT), Electronic Information Technology (EIT), etc.
  - Includes telecommunications products (such as telephones), information kiosks and transaction machines, web sites, multimedia, and office equipment such as copiers and fax machines
  - Does not include equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information
    - Example, thermostats or temperature control devices and medical equipment that contain information technology that is integral to its operation

- **Information Technology**: [a]ny equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information
  - Includes computers, ancillary equipment, desktop software, client-server software, mainframe software, web application software and other types of software, firmware and similar procedures, services (including support services), and related resources

- **State websites:** funded, or operated by or for a state agency or institution of higher education, including key public entry points
  - Includes both the home page and any "key public entry points" (i.e., a web page on a state website that is frequently accessed directly by members of the public, which a state agency or institution of higher education has specifically designed to enable direct access to official agency or institution of higher education information.)

Contract Formation: Terms & Conditions (cont.) Additional Requirements: Accessibility/Procurement

- EIRs aren't limited to those that are directly developed, procured, maintained, changed, or used by a Texas institution of higher education, but also include EIRs developed, procured, or materially changed by a contractor of an institution of higher education, if the contract either requires the use of such EIRs or requires the contractor to use such EIRs, to a significant extent, in performing a service or furnishing a product.

- EIR Accessibility Procedure
  - Use when contract requires contractor to:
    - (i) provide an EIR to UT for use,
    - (ii) develop an EIR for UT,
    - (iii) provide and use a specific EIR, or
    - (iv) provide and use an EIR to a significant extent in performing the services or furnishing the products identified in that contract
  - Identifies ways to include terms and conditions in a contract under which an EIR is procured to require the contractor (who is the expert in the EIR, being the owner, creator, etc. of that EIR) to ensure that the EIR complies with the DIR Accessibility Rules
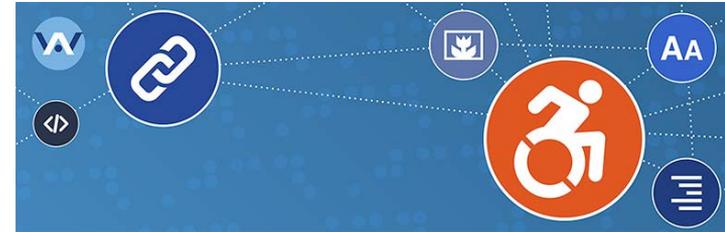
Contract Formation: Terms & Conditions (cont.) Additional Requirements: Accessibility/Procurement

EIR Accessibility Procedure – Step 1:

- Does EIR fall within one of the following exceptions
  - "$25,000 or Under" Exception
    - Total dollar value being paid over the life of the contract.
    - Does not apply to UT websites intended to be accessed by the general public or through which official UT information is made available.
    - Contract may not be divided into multiple contracts.
  - UT System Employee Exception
    - Only accessed by internal UT System Administration employees

- If so, the purchase falls under an existing "Significant Difficulty or Expense" exception.
  - No review is required.
  - Be prepared to provide accommodations if a difficulty is encountered.

Contract Formation: Terms & Conditions (cont.) Additional Requirements: Accessibility/Procurement
EIR Accessibility Procedure – Step 2:

- Does EIR fall within one of the other exceptions (*must include in procurement file a written memorandum justifying applicability of exception/exemption to that EIR*):

  - Embedded Information Resources

  - Medical Equipment

  - EIRs in Spaces for Maintenance, Repair, or Occasional Monitoring

    - Must include:
      - Justification
      - Alternate means of access - plan must be:
        (1) in writing, approved by CIO
        (2) documented, made available in an accessible format
        (3) maintained as a record in accordance with records retention schedule

  - EIRs for National Security

  - DIR Exemptions: http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=42

Contract Formation: Terms & Conditions (cont.) Additional Requirements: Accessibility/Procurement EIR Accessibility Procedure – Step 2 (*cont.*):

- Does EIR fall within one of the following exceptions (*must include in procurement file a written memorandum justifying applicability of exception/exemption to that EIR*):
  - Prior "Significant Difficulty or Expense" Exception by Another UT Institution
    - Contact the purchasing and/or information technology offices at the other UT institution
    - Confirm EIR is the same as that previously procured by the Prior UT Purchaser
    - Obtain all Prior UT Purchaser's written documentation demonstrating compliance with EIR Accessibility Procedure
    - Write a memorandum to the procurement file demonstrating applicability of "significant difficulty or expense" exception to your procurement
    - Obtain written approval of memo by institution's President or his or her delegate
    - Ensure that the written, approved memorandum is maintained according to records retention schedule

Contract Formation: Terms & Conditions (cont.) Additional Requirements: Accessibility/Procurement

EIR Accessibility Procedure – Step 2 (*cont.*):

- Require the contractor to provide the following:
  - (1) accessibility information through one of the following methods:
    - URL to completed Voluntary Product Accessibility Templates (VPAT) (https://www.itic.org/policy/accessibility)
    - Accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates
    - URL to a web page which explains how to request completed VPATs
  - (2) credible evidence of contractor's capability or ability to produce accessible EIR products and services
    - e.g., internal accessibility policy documents, contractual warranties, accessibility testing documents, and examples of prior work results

Contract Formation: Terms & Conditions (cont.) Potential Additional Requirements: Privacy

- **UT System Privacy Officer** *(Cristina Blanton)*
  - **Confidentiality:** during the contracting phases information, discussions and drafts among UT System teams should not be shared with a vendor unless expressly allowed by CNP or legal/privacy
  - **Privacy (HIPAA, FERPA, GDPR):** privacy of UT System data is a huge factor in working and negotiating with Vendors. All data, is valuable but most importantly, confidential due to legal requirements.
  - **Cyber Liability Insurance:** the more institutions onboard, the more high-value the data, the more important this section becomes in negotiations. We always want to ensure coverage for our data and anything that could happen to it while with the vendor.

Contract Formation: Terms & Conditions (cont.) Potential Additional Requirements: Info Security

- **Vendor security risk assessment – Why?**
  - Per HIPAA, FERPA, Texas Legislation, *TAC* Chapter 202, DIR, UTS 165, and audits
- **Vendor security risk assessment – When?**
  - Performed before procurement of software or services (PO, contract, Zero-dollar, contract amendment, etc…)
  - Performed before or during the RFP process
  - Performed for Consultants, both individually-hired or through agency
    - Note: several staff augmentation agencies have already been approved
  - Repeated *annually* for any of these reasons:
    - applications or contractors with access to UT System Confidential* data
    - systems considered "Mission Critical"
    - those with a Contract Monitoring Plan in place
  - Repeated periodically for non-Confidential/Mission Critical
    - when contract renews, request "light" review
  - Request a security risk assessment using ISOTRAQ

Contract Formation: Terms & Conditions (cont.) Potential Additional Requirements: Info Security *(cont.)*

- **Vendor security risk assessment – What?**
  - Results are auto-generated to submitter from ISOTRAQ when assessment is complete
  - Overview: description of the software or service

  > **Overview:**
  >
  > I have completed the third-party information security risk assessment of Concur, which is being considered by UT System Controller's office to provide Expense report management software. Concur does collect, process, and store confidential or controlled university data. Specifically, PII and credit card numbers. • Concur's responses to UT System RFP Appendix 5 (EIR) and Appendix 6 (Security) • Security Scorecard report for Concur Solutions: Score: 770 - attached • SSL report for Concur Solutions. Score: A+ - attached

  - Observations: notable security controls in/not in place. Technical in nature

  > **Observations:**
  >
  > • Solution offered as a SaaS. Concur's services are located at Tier 4 co-location facilities owned by AT&T. All United States data centers undergo twice-annual SOC 1 Type II and annual PCI audits. To gain assurance that these controls are maintained, Concur obtains the SOC 1 audit report on a semiannual basis. All data is stored in U.S.-based Data Centers. • The vendor contracts with third-party security providers to conduct semi-annual security reviews and vulnerability assessments / Penetration tests. Results and recommendations are incorporated. • The SaaS application offers SAML 2 Federation. Can integrate with any SAML 2 Federated SSO IdP. Concur has implemented Shibboleth at UT System. • Employee Personally Identifiable Information (PII) and credit card data included. Employee data typically includes first name, last name, email address, employee ID, employee's

  - Recommendations: strong suggestions for the vendor and/or DCA. More restrictive for Confidential/Mission Critical
  - Requirements: must be in place before procurement. More restrictive for Confidential/Mission Critical

  > **Recommendations:** No recommendations, scope of use is still the same.
  >
  > **Requirements:**   At every renewal, these documents need to be gathered (if possible) for analysis: -Latest SOC 1 Type 2 -Current HECVAT Assessment -Most current vulnerability report

Contract Formation: Terms & Conditions (cont.) Potential Additional Requirements: Info Security *(cont.)*

- **Next Steps:**
  - CNP is notified when the assessment is complete
  - Use the Recommendations and Requirements to transfer to a Contract Monitoring Plan
  - Contact the Information Security Office for questions and clarifications
    - Bobby Yanez, Sr. Security Analyst – Risk and Compliance OR SecAdmin@utsystem.edu

DCA Role and Responsibilities:
Contract Risk Assessment

CNP and the DCA will complete a [Contract Risk Assessment](#) based on the following factors:

Risk Criteria & Risk Level
Low (L), Medium (M), High (H)

Amount of Agreement		Term of Agreement	
○ L = <$0.25M		○ L = <3 years	
○ M = $0.25M - $3.0M		○ M = 3- 5 years	
● H = > $3.0M		● H = > 5 years	
○ H = Undetermined			

Prepayment/Progress Payment		Personal, health, safety data	
○ L = No		○ L = No	
● M = Yes		● H = Yes	

Data Security Issues		Accessibility Issues	
○ L = NA or None		○ L = NA or None	
● M =Yes		● M = Exception	

Intellectual Property Issues		Safety or Security Issues	
● L = NA		● L = No	
○ H = Yes		○ M = Yes	

HUB Subcontracting Plan		SOW Deliverables	
○ L = No		● L = NA	
● M = Yes		○ M = Specific	
		○ H =Not Specific	

DCA Role and Responsibilities: Contract Monitoring Plan

- A written contract monitoring plan:
  - must be submitted by the DCA to CNP
  - must address all medium and high-risk factors identified in the Contract Risk Assessment
    - identified risk factors will determine "routine" versus "enhanced" monitoring requirement
      - **Routine** Monitoring: DCA will develop a written monitoring plan that addresses all medium risks that have been identified for the contract.
      - **Enhanced** Monitoring: If any "High Risk" items are identified, CNP will work with the DCA to develop the contract monitoring plan. Both CNP and the DCA will maintain copies of the contract monitoring plan. CNP will actively participate in meetings with the contractor and be provided with any reports that are submitted by the contractor. CNP is responsible for identifying and reporting any significant contract issues to the Board of Regents thru the Office of Business Affairs.
    - Information Security Office and Privacy Officer must review for any required monitoring as it relates to proprietary and confidential data
  - be shared with the contractor
  - be included in the central contract file

DCA Roles and Responsibilities: Contract Monitoring Plan (cont.)

- Effective contract monitoring assures that the contractor is performing all contractual obligations and allows the department to identify and address any developing problems or issues

- Contract Performance Monitoring Review Methods:
  - Desk Review: review reports submitted by the contractor, such as progress, status, and activity reports or other relevant documentation
  - Expenditure Document Review
  - Site Visits
  - Third-Party Monitoring (independent oversight) for highly technical work, third-party subject matter experts may perform independent monitoring services, independently or in conjunction with DCAs

- "Enhanced Monitoring" is required for high-dollar and high-risk contracts

NOTE:
- *Contract monitoring does not apply to memoranda of understanding (MOUs), memoranda of agreement, interagency contracts (IACs), interlocal agreements, intergovernmental contacts or contracts where there is no cost.*

DCA Roles and Responsibilities: Contract Monitoring Plan (cont.)

- "Enhanced Monitoring" may include increased frequency of contractor meetings/site visits, additional documentation required to assess contractor performance or additional documentation to assess financial performance against contract amount

- The Executive Vice Chancellor for Business Affairs (EVCBA) shall receive regular reports on contracts identified as requiring "Enhanced Monitoring"
  - CNP should be involved in "Enhanced Monitoring" activities
  - CNP Director will provide reports to the EVCBA and provide clarification and address questions as necessary

NOTE:
- *Where serious issues or risks are identified, the EVCBA shall notify the Board of Regents*
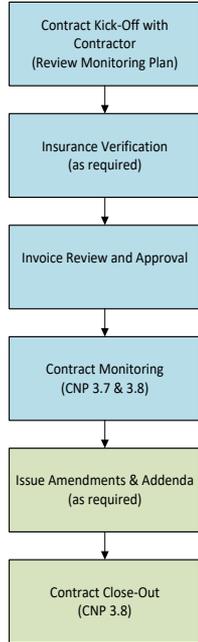
DCA Role and Responsibilities: Contract Processing Checklist

- Your submission to CNP should include a completed Contract Processing Checklist:
  - Always use the most current form (link below):
    https://www.utsystem.edu/offices/business-affairs/contract-administration
  - The Checklist should be completed as described in the general contract management training and include attachments, if required, as described below.
    - Procurement: RFP No., GPO, or Exclusive Acquisition Justification (EAJ) form
    - Approvals: HUB/HSP, OGC, SWIS, ISO, Privacy, Concurrence forms, Accessibility, Certificate of Insurance (COI)
    - Nepotism disclosure forms, Texas Ethics Commission Form 1295, LBB Attestation Letter, Board of Regents' Approval documentation
    - Contract Risk Assessment and the Contract Monitoring Plan and Close-out Form
    - Contract
      - e.g., original, amendment, addendum, project addendum

DCA Roles and Responsibilities:
Contract Monitoring and Close-Out

| Contract Kick-Off with Contractor (Review Monitoring Plan) |
| Insurance Verification (as required) |
| Invoice Review and Approval |
| Contract Monitoring (CNP 3.7 & 3.8) |
| Issue Amendments & Addenda (as required) |
| Contract Close-Out (CNP 3.8) |

- Conduct Kick-Off Meeting with contractor

- Annual insurance (COI) verification

- Review, accept and approve invoices and HUB PAR forms (if applicable):
  - Assure that contract deliverables are completed
  - Assure that contract schedules are being met

- Monitor contract activities as required by the Contract Monitoring Plan:
  - Quarterly Spend Reporting, Accessibility Remediation Plan, etc.

- Initiate contract modifications as required:
  - Amendments, Renewals, Project Addenda, etc.

- Complete Contract Close-Out Form portion of the Contract Monitoring Plan and Close-Out Form and assure that final invoices are processed

Questions/Discussion