



Contracts and Grants



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Determining Type of Agreement (Contract, Grant, or Addendum)

Contract or grant?

A contract should be used if the other party is performing services for the Indiana Department of Health (IDOH), for example technical support, consultation, etc. A grant is used if IDOH is funding a project managed by a grantee for a public purpose. A grant usually benefits members of the public, not IDOH. A grantee is usually a nonprofit or government entity, not a for-profit business. The source of the funding does not necessarily determine whether an agreement is a grant or a contract. Federal grant funding can be used to fund a contract. Contracts with Indiana public universities use a State Educational Institution contract template. There is no special grant template for State Educational Institutions.

Addendum

The addendum (not to be confused with *amendment* or *attachment*) is a template that is used if a contractor asks IDOH to use their form contract. It includes the required State of Indiana terms and cancels out problematic terms in the vendor's form (e.g. indemnification.) IDOH does not sign the form contract.

When a vendor asks for changes to the boilerplate

Why changes are to be avoided

Vendors and grantees are paid using public funds (taxpayer dollars). The Indiana General Assembly has set an approval process that must be followed to commit public funds. It has also determined that specific terms or conditions relating to state contracts are in the best interest of the public. Any changes need to be approved by IDOH Office of Legal Affairs (OLA). Information technology-related changes (including cybersecurity insurance amounts) must be approved by IDOH Office of Technology and Cybersecurity (OTC) and the Indiana Office of Technology (IOT).

When negotiating with a contractor (for example, when there is a special procurement and not an RFP) make sure the contractor knows up front they need to agree to state terms.

Required clauses

- These clauses are required by law or State policy and modifications will rarely be approved:
 - Compliance with laws
 - Disputes



- Drug-free workplace (applies only to employees in the State of Indiana) *Executive Order 90-5*
- Employment eligibility verification (not required for government entity, but okay to include it) *IC 22-5-1.7*
- Funding cancellation *IC 5-22-17-5*
- Governing law (unless the other party is federal or another state government)
- Nondiscrimination *IC 22-9-1-10*
- Payments *IC 4-13-2-14.8*
- Termination for convenience (by the state, not the contractor)
- Termination for default
- Non-collusion and acceptance (on signature page) *IC 22-9-1-10*
- Changes to contractor's/grantee's insurance amounts can be considered, but cybersecurity insurance changes require IOT approval
- The reason for any changes should be explained
- Changes will delay approval by other state signatories

Prohibited clauses

- The State cannot agree to certain terms, which are listed on the addendum template. These are the prohibited terms that vendors most frequently request:
 - IDOH Indemnification of the other party
 - The Indiana Tort Claims Act (IC 34-13-3) defines claims for which the State is immune, has a particular procedure to be followed in making a claim, and sets limits on recovery against the State.
 - Indemnification also violates the Indiana Constitution, Article 10, Section 3, which provides "no money shall be drawn from the Treasury, but in pursuance of appropriations made by law." Money is not appropriated to pay the costs, judgments, or other expenses of non-state entities.
 - Choice of law or jurisdiction in any state other than Indiana
 - Indiana is a sovereign state. Our contracts are governed by Indiana law. We do not submit to the jurisdiction or governing law of another State. See IC 34-13-3-1.
 - Binding arbitration
 - Agency budgets do not typically have funds appropriated to pay for mediation or arbitration. The templates have a provision for resolution of disputes through IDOA. Arbitration can subject the state to a non-judicial judgment.
 - Providing insurance
 - IC 4-13-1-17 prohibits the state from purchasing insurance to cover loss or damage to property
 - IC 34-13-3-20 prohibits the state from purchasing liability insurance
 - Confidentiality of the contract itself



- With very few exceptions, contracts are public records and available to the public under the Indiana Access to Public Records Act (APRA), IC 5-14-3. IC 5-14-3.5-2 requires that contracts be posted on the State’s website.

Communicating with the vendor

If you are communicating with a vendor about changes, **don’t forward OLA emails and comments to vendors without checking with OLA.** Communications with OLA are protected by attorney-client privilege, and we want to maintain that privilege. Consult with OLA about how to communicate our position to the vendor.

Special situations

Revenue-generating contracts - Consult with Finance and OLA for assistance with revenue generating contracts. Many of the boilerplate provisions are not applicable.

Other government entities - Some boilerplate terms may be changed if the vendor or grantee is another state government (including public universities) or federal government.

Statutory Authority for Grants

- IC 16-19-3-1 gives IDOH general power to fulfill its statutory duties, and it can be used if there is no specific statutory authority for a grant
- If there is a specific Indiana Code (IC) section authorizing a grant, that IC cite can be used. A valid IC cite will follow the format **IC 16-xx-x-x-**. XX will be 19 or higher
- If the grant cites the United States Code, the cite should follow the format U.S. Code **XX USC xxxx**
- It’s preferable to cite to the statute (IC) instead of legislation (HB, SB, HEA, SEA). If you need help determining the applicable statute, consult with OLA.

Duties or scope of work (contracts) and project description (grants)

Attachment A

- Should be clear not only for reviewers but for anyone who wasn’t involved in the contract development.
- For contracts, it can be helpful to include a short description of services in the body of the contract.



- Make it clear what we are paying for, in original and in amendments adding money
- Don't always use the vendor's or grantee's proposal unchanged, especially if it includes options we're not paying for. You can ask them for revisions to reflect the duties or draft it yourself.
- See attached example in appendix

Budget Attachment (Attachment B)

- Make it clear what we are paying for and how payment is determined; for example, hourly rate, monthly rate, payment per deliverable, cost reimbursement, etc.
- For amendments, a table with columns for original and amendments is a good way to show changes (see example in Appendix).

Amendments

- Explain any increased funding
- Clearly indicate what has changed from original scope of work
- It's not necessary to include the original scope of work attachment. The Attachment A-1 (or A-2, etc.) should indicate what has changed from the previous attachment.
- An expired agreement cannot be amended. The amendment must be executed by the contractor/grantee before the original agreement (or previous amendment) expires.

Termination requests

- To terminate a grant for convenience, notify Finance and OLA, and complete the contract termination request form available on the IDOA website:
<https://www.in.gov/idoa/files/ContractTerminationRequest.pdf>
- Obtain assistant commissioner or program director signature and forward to OLA with a copy of the contract.
- If you may need to terminate for default, consult with OLA as soon as possible.

Final checklist

- **Contracting with correct entity:** The contractor or grantee name needs to be consistent throughout the documents (individual, corporation, LLC, etc.) If there is a DBA that should be reflected in the documents.
- If it's a grant, use "Grantee" not "Contractor" in agreement and all attachments.



- Numbers need to add up
- Dates should be correct
- Spell out acronyms and abbreviations on first use
- Changes to boilerplate need to be listed in boilerplate affirmation clause (last paragraph)
- If there is federal funding, funding information on page one of grant should match attachments
- If the contractor was selected through an RFP, the contract needs to match the RFP/proposal (explain any differences and possibly check with IDOA.)
- Proofread for typos and similar errors (especially on Attachment A)

Other resources

Indiana Department of Health Finance Division:

<https://www.in.gov/health/thenervecenter/finance/>

Indiana Department of Administration Contract Forms, Manuals and Templates:

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

2024 State Contract Seminar Presentation Materials:

https://www.in.gov/idoa/procurement/files/2024_ContractsSeminarFinalSlides_v4.pdf

Public Search for Contracts (Transparency Portal):

<https://secure.in.gov/apps/idoa/contractsearch/>



Appendix

Attachment A

Background/Purpose

- General purpose and description of the services to be provided
- Identifies applicable State or federal laws governing the work

Responsibilities of the Contractor

- Describes the work deliverables and specific milestone or due dates in a way that will allow contractors to understand the State's needs
- Defines the end results that an agency is seeking to achieve
- Establishes performance standards and controls
- Defines how an agency will measure success
- Define corrective action plan (CAP) steps to be taken to remedy missed expectations
- Define consequences for missed expectations
- Contract payment terms must reflect the work outlined in the scope of work. Contracts for services should be based on the overall costs for services required for the project with a breakdown by hours and rates, direct expenses, and fees for subcontractors.



Budget attachment example for amendment

Attachment B-1
2023 - 2024 Budget

Local Agency Name:

CCC Phase 3	\$ 6,760.00	Project:	
		Activity:	RECIPNT
Budget Area	Original Amount	Amended Amount	Total Amount
Salaries	\$ 7,000.00	\$ 4,760.00	\$ 11,760.00
Fringe	\$ 500.00	\$ -	\$ 500.00
Contract Services	\$ 500.00	\$ -	\$ 500.00
Supplies	\$ 2,000.00	\$ -	\$ 2,000.00
Transportation/Travel	\$ 2,000.00	\$ -	\$ 2,000.00
Space Cost	\$ 2,171.00	\$ 2,000.00	\$ 4,171.00
Equipment	\$ -	\$ -	\$ -
Total	\$ 14,171.00	\$ 6,760.00	\$ 20,931.00

