

SUBJECT: COMPLETION AND EXECUTION OF CITY CONTRACTS

A. Purpose: The purpose of this APM is to establish policies and procedures for negotiating and entering into City contracts. Except where indicated, this APM applies to all City contracts, including public works contracts.

B. Authorization of Contracts:

1. General: All contracts must be properly authorized by the Common Council or through an official procedure. Sec. 4.26, Madison General Ordinances (MGO), establishes the general procedure to authorize contracts, except for public works contracts required to be bid under Wis. Stats. sec. 62.15. The primary method to authorize all contracts is through a resolution of the Common Council, but some contracts may be authorized without resolution: by the Comptroller as permitted by MGO sec. 4.26, as part of the approved city budget (e.g. CDBG and Community Services), by other ordinance (e.g. MGO sec. 33.21, Monona Terrace), or by a resolution establishing an alternate procedure (e.g. police special duty contracts.) Unless specifically authorized through one of the above methods, all contracts and contract amendments must be individually authorized by Council resolution. (See par. L. for amendments.) **Department and division heads, City employees, boards, committees and commissions do NOT have authority to enter into contracts, unless specifically authorized by the Common Council.**

2. Requirements for Resolutions: Every resolution authorizing a City contract must accurately identify the contracting party, establish the maximum amount of funds to be expended, and provide enough information about the substance of the work to be done so that, in the event of a legal dispute, a court can reasonably determine that the contract was authorized by the Council and that the Council was informed as to what the contractor was expected to accomplish.

Authorizing resolutions and all contracts must make clear that the contractor is contracting with “the City of Madison,” not with a department or agency, and should specify who will sign the contract. The contract signature page must make clear that the Mayor and the City Clerk or other authorized official(s) are signing on behalf of the City. Under sec. 4.26, MGO, the Mayor and City Clerk are to sign all contracts, unless otherwise authorized by resolution or ordinance. The Mayor and City Clerk also sign public works contracts over \$25,000, per Wis. Stats. sec. 62.15. Sec. 4.26, MGO, specifically authorizes the Comptroller or designee to sign certain contracts, but those contracts generally will not require a resolution. See “Relationship to APM 1-4,” below.

3. Exceptions: The Monona Terrace Board, the Library Board, and the Board of Public Health for Madison and Dane County have the power to authorize certain contracts on behalf of the City of Madison without Council authorization. These bodies must follow any other rules governing contract execution. Certain other bodies, such as Community Development Authority (CDA), Madison Cultural Arts District (MCAD or Overture), and others that may be created in the future are separate legal entities with authority to enter into contracts in their own name, and are not subject to this APM or City purchasing ordinances, unless they elect to be.

4. **Department/Division Head Responsibilities:** Although department and division heads do not sign contracts, where the contract provides that certain decisions may be made by the City, such as requests for extra services (within the limit approved by the authorizing resolution), requests for reports and documents, granting permission to publish documents, and the like, such decisions are the responsibility of the department or division head administering the contract (or other staff, if designated by name in the contract.) See also paragraphs L., "Amendments and Change Orders," and M., "Terminations."

C. **Relationship to APM 1-4, Purchasing Procedures:**

1. **Purchase Order:** Some contracts may be entered into by means of a purchase order, according to the procedures established in APM 1-4 and Sec. 4.26, MGO. Purchases authorized by APM 1-4 and contracts authorized by Sec. 4.26(2), "Goods and Supplies," and 4.26(3) "Services," MGO, do not require a separate authorizing resolution.
2. **Purchase of Services:** Section 4.26(3) , MGO, authorizes the Purchasing Agent to sign contracts for purchase of services when all of the following apply:
 - (a) The funds are included in the approved City budget.
 - (b) An RFP or competitive process was used, or the contract is exempt from competitive bidding under 4.26(4)(a).
 - (c) The City Attorney has approved the form of the contract.
 - (d) The contract complies with other laws, resolutions and ordinances.
 - (e) The contract is for a period of 1 year or less, OR not more than 3 years AND the average cost is not more than \$50,000 per year, AND was subject to competitive bidding. (if over \$25,000 and exempt from bidding under 4.26(4)(a), regardless of duration of the contract, the Common Council must authorize the contract by resolution and the Mayor and City Clerk must sign, per 4.26(5)(b)).

D. **Approval by City Attorney:** It is the policy of the City of Madison that all City contracts must be in a form approved by the City Attorney. Approval as to form means that, in the opinion of the City Attorney:

1. The contract is authorized.
2. The contract terms do not violate any law or regulation and the contract contains all the provisions that applicable statutes and ordinances require.
3. The signature page contains all necessary dates and signatures.
4. Surety documents, when required, are in proper form.

E. **Contract Forms:** Contracts come in many forms, such as memoranda of understanding (MOU), acceptance of terms from vendors, or agreeing to the terms of a sale electronically. Certain contract forms have already been approved by the City Attorney. For example, public works contract forms are part of the standard specifications for public works contracts. Any change in the public works contract form must be approved by the City Attorney before

being submitted to the Board of Public Works for approval. In the same way, Community Services and CDBG purchase of service contracts use a standard form, which must be approved in advance by the City Attorney. The City Attorney has also approved standard forms for contracts for purchase of services (POS), available on EmployeeNet and circulated to all departments and divisions. In each case where a request for proposals (RFP) is circulated or advertised, the RFP or bid specifications shall contain a copy of the appropriate form contract.

F. **Notices:** Where a contract provides a place to list a contact person for official “Notices,” this person shall be the department or division head, identified by job title. The department or division head must notify the City Attorney if s/he is served with an official notice under a contract.

G. **Negotiated Contracts:** All City staff is encouraged to use the standard Contract Forms approved by the City Attorney. If prospective contractors propose changes in a form contract, staff shall consult with the City Attorney before agreeing to the changes. If any change in the form contract is approved, the change shall be limited to the particular contract that was the subject of the negotiations. Changes are not to be incorporated in standard form contracts unless the City Attorney approves a revised standard form contract.

Staff assigned to negotiate a contract for which no standard form is appropriate shall consult with the City Attorney’s Office, as far in advance of the negotiations as possible.

H. **Scope of Services:** Agencies that administer contracts are responsible for preparing the contract’s scope of work/scope of services. The scope of services must be written clearly and concisely. It must provide definite answers to the questions: who? what? where? when? and how? It must contain payment and performance schedules and provisions for penalties and damages for delayed or inadequate performance, if such provisions are appropriate. It must not contain any provision that conflicts with any provision in the contract form to be used, or City ordinances.

I. **Indemnification and Insurance:** Indemnification and insurance provisions in standard form contracts have been approved by the Risk Manager and City Attorney.

1. **Insurance Requirements:** If a prospective contractor proposes changes to the City’s standard insurance requirements, staff responsible for negotiations shall consult the Risk Manager.
2. **Nonstandard Indemnification Language:** If prospective contractors propose ANY change to the City’s standard indemnification clause, staff responsible for the negotiations shall consult the Risk Manager and City Attorney. Only the City Attorney can approve changes to language in form contracts.
3. **Indemnification of other parties:** The City of Madison does not agree to the indemnification of any party without the express approval of the Common Council.

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4. Indemnification in Public Works contracts: The indemnification provisions for public works contracts are part of the "Standard Specifications for Public Works Construction" established by the Board of Public Works. No changes are permitted. Any change to the Standard Specifications must go through the City Attorney and Board of Public Works.
- J. Special Contracts: Grants awarded to the City: There are three stages of approval for a grant: application, grant acceptance, and contract authorization. It is desirable, but not mandatory, to seek Council approval before applying for a grant. To accept grants on behalf of the City, agencies must have Council approval. Approval may be granted in the agency's approved budget, a separate resolution, or through prior authorization by the council (e.g. through the Intergovernmental Agreement creating the Department of Public Health for Madison & Dane County). To enter into grant contracts on behalf of the City, agencies must have Council approval. Agencies may wish to combine these steps in one resolution, so that only one resolution is necessary to authorize the entire project (if all necessary details are known at the time). Agencies applying for grants shall furnish the City Attorney with a copy of the proposed grant contract (if any) as early as possible so that grant conditions may be compared with applicable City policies. Grant contracts are an exception to the requirement which calls for all contracts to be signed first by the other party. Grant contracts are not an exception to the policy that the City of Madison does not agree to indemnify another party without the express approval of the Common Council.
- K. Special Contracts: Other Governmental Bodies: Contracts with other governmental bodies present unique issues. City staff contemplating such agreements should consult the City Attorney as early as possible.
- L. Contract Amendments and Change Orders: Unless authorized within the contract itself, changes to ongoing contracts must be made by a written Amendment and are treated like a new contract (with a few exceptions). For this reason, any proposed amendment must be analyzed to determine what authority is needed, any written amendment document must be signed by the same parties who signed the original contract and routed accordingly (unless another procedure is described in the original contract.) Some contracts include provisions to allow department heads or staff to authorize future changes, if so, those procedures should be followed.

Changes to a Public Works contract must be handled through the Change Order procedure established by the Board of Public Works. Anyone requesting a Change Order must use the Change Order Form and follow the "Instructions for City Approval of Changes Orders" on the back of that form.
- M. Termination: Whenever a department or division head responsible for administering a contract believes that the contractor is in default or when the department or division head has serious concerns about the ability of the contractor to perform the work acceptably, he/she shall consult the City Attorney immediately.
- N. Signature of Other Party: Contracts should not be submitted to any City official for signature until the appropriate signatures have been obtained from the contracting party.

O. Electronic Signatures: Unless otherwise prohibited by law, any document that requires a manual, facsimile or other form of signature or that is given effect with a manual, facsimile or other form of signature may be transformed into electronic format, and may be signed or given effect with an electronic signature provided the electronic signature meets all of the requirements of chapter 137 of the Wisconsin Statutes or such other statutory requirements as may be adopted under Wisconsin or Federal law. Where only a single electronic signatory is provided for, such contract shall be signed electronically by the Mayor and manually by the City Clerk and other signatories, if any, who approve the contract as to form. Under such circumstances, the document may be executed in one or more counterparts, one or more of which may be effectuated by electronic signatures(s); each of which shall be deemed an original; but all of which together shall constitute one and the same instrument.

P. Routing:

Contracts requiring the Mayor and Clerk's signature should be routed as set forth below. The City Clerk and City Attorney must approve any alternate routing procedures.

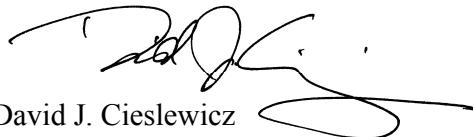
1. The department or division that originates the contract should obtain at least 2 copies (3 is preferred) with original signatures of a person or persons authorized to act for the contracting party. The department or division should then attach the authorizing resolution to the signed copies, attach a contract routing form, and send the documents to the City Clerk.
2. The Clerk verifies that the resolution authorizes the contract and that the minutes of the Council meeting where the resolution was approved have been signed by the Mayor. The Clerk then signs the contracts and sends the documents to the Department of Civil Rights.
3. The Department of Civil Rights reviews contracts for two areas of compliance. The Disability Rights and Services Program reviews for compliance with sec. 39.05, MGO (Non-discrimination Based on Disability in City Facilities and City Assisted Programs and Activities). Pursuant to sec. 39.05(3)(b), not all contracts are subject to this ordinance. The Affirmative Action Division checks the contract for compliance with MGO 39.02, the Affirmative Action ordinance, including nondiscrimination language required by 39.02(9)(b), the Articles of Agreement, and other mandatory language. The AA Division confirms whether applicable affirmative action plans and compliance agreements are needed or already on-file. Pursuant to sec. 39.02(9)(a) 2., MGO, certain contracts are exempt from some or all of the Affirmative Action ordinance. Although some contracts routed for signature are exempt, it is City policy that all contracts be routed to the Department of Civil Rights to be certain that the claimed exemption is proper. DCR then sends the contract to the Risk Manager.
4. The Risk Manager determines that the contract language relating to indemnification and insurance is in accord with City policy. After the Risk Manager has approved the contract, s/he routes the documents to the City Comptroller.
5. The Comptroller determines that funds are available to pay the costs agreed upon in the contract, signs it, and then routes the documents to the City Attorney.

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6. The City Attorney approves the contract as to form and routes the documents to the Mayor for his/her signature.
7. After the Mayor signs the contracts, his/her office returns all copies to the City Clerk. The Clerk keeps one for filing, and returns all remaining copies to the agency responsible for administering the contract. The agency sees to it that the contractor receives a copy which contains original signatures as set forth above.



David J. Cieslewicz
Mayor

APM No. 1-1
February 15, 2008

Original APM dated 7/7/75
(Revised 12/9/99, 4/7/03, 12/11/07)