

September 3rd, 2024

Office of Procurement and Contracts – Information Circular 25-02

Subject: Multiple Year IT Agreements

During the past two or three years, suppliers have been trending towards multiple year service agreements, especially within the IT realm. This situation is problematic in the state environment with annual appropriations. Agencies are not guaranteed of any specific funding; thus, they cannot encumber funds from future years budgets. Paying for a multi-year agreement from a single year's funding creates allocation issues as well.

With these challenges in mind, the Office of Procurement and Contracts, in cooperation with the Office of Accounts and Reports has developed the following guidelines to be used if a multi-year agreement is required.

- 1) Agreements should be for three (3) years or less. Longer-term agreements require approval from the Chief Information Technology Officer and Director of Procurement (or their designees). This approval can be in the form of an e-mail or written document.
- 2) Payment for the service must be made on an annual basis, in the same fiscal year that the service is rendered.
- 3) The SOK contract which the service is purchased must extend past the end date of the service agreement. In the event that the SOK contract expires prior to the service agreement, the agency must confirm that the vendor's contract with the SOK contains a survivability clause stating that the terms of the original agreement will continue throughout the life of the service agreement.
- 4) The vendor must agree to the terms of the DA-146a. If the vendor requires a software license agreement, the DA-146a must be the highest in the order of precedence and incorporated into the agreement. If no SLA is required, the vendor must agree to and sign the DA-146a form.
- 5) In the event the product is procured through a third-party reseller, this agreement must be agreed to by the actual vendor of the product. (Example: Software product AAA is purchased through SHI. The agreement is with AAA, not SHI). Software VARs cannot agree to these terms on behalf of the vendor, nor the state. This negotiation must take place prior to the order so the terms are clear before the PO is issued.
- 6) The DA-146a states that the service agreement can be terminated in the event of non-appropriation. This should be pointed out to the vendor. Their agreement should not contain any language that requires payment in the event the contract is canceled. If the DA-146a is the highest in precedence, the state is covered, but it is good to ensure the vendor understands this before entering into the agreement.
- 7) If this agreement is procured through a Prior Authorization, the SLA with integrated DA-146a will be required. Usually this is PA Type "CSD" and should reference a prior purchase.

In the event pre-payment is required, the following additional items are required:

- 1) The purchase must result in a significant savings to the state (a minimum of 20% or \$25,000).
- 2) The service agreement must include clawback language that entitles the state to recover any unused portion of the paid amount in the event of early contract termination.
- 3) Approval of: 1) Executive Branch Chief Information Technology Officer, 2) Director of Budget, 3) Director of the Office of Procurement and Contracts. This is obtained by the completion of the Request for Authorization for Pre-Payment in Full (Listed below).
- 4) The clawback language, form, and signed SLA (or DA-146a) must be attached to the SMART requestion.
- 5) The "Request for Authorization for Pre-Payment in Full for IT Subscription/Licensing Contract" form must be complete and attached to the SMART requestion.

KS Dept. Administration, Office of Procurement and Contracts
Request for Authorization for Pre-Payment in Full for IT
Subscription/Licensing Contract

Please Submit to:
procurement@ks.gov
(785) 296-2376

All purchasing activity must comply with Kansas purchasing statute K.S.A. 75-3739 and other relevant statutes and policies. Agency must attach proof of significant cost savings in order for consideration of pre-payment in full for a multi-year contract. No contract for pre-payment in full may be entered into by the agency without approval of all parties on this document.

General Agency Information (complete all fields.)

Agency Name:

Bus. Unit:

Address:

Phone #:

Email:

Agency Primary Contact Information (complete all fields.)

The Primary Contact must be the individual responsible for the procurement activity specified in this request

Name:

Title:

Phone #:

Email:

Supplier/Contract Savings Information (complete all fields and attach proof of projected cost savings)

Supplier Name:

Contract Purchase/Length of Contract:

Total Projected Contract Cost **Without** Pre-Payment:

Total Projected Contract Cost **With** Pre-Payment In Full:

Total Projected Cost Savings:

Agency Certification:

I understand that no contract containing pre-payment in full may be signed until this authorization is completed.

In addition, I certify that the above requirements are contained in the contract:

- End date of the supplier contract does not extend beyond the end date of the Master contract under which the agreement is being made (if applicable)
- Contract contains an Exit clause
- Contract contains a Survivability clause
- Contract contains a DA-146A form
- Contract contains language requiring a pro-rated clawback of any pre-payment if the contract is ended early by either party

By signing below, I certify that the above information is true and correct to be considered for approval of pre-payment in full of the above specified contract.

Agency Head Print Name	Date:
Agency Head Signature	

Return completed form along with documentation supporting cost savings to procurement@ks.gov

Authorization for Pre-Payment in Full:

Chief Information Technology Officer

Date

Director of the Budget

Date

Director of the Office of Procurement and Contracts

Date