

# Contract Review Checklist for Government Agencies in Washington State

This checklist provides general guidance to assist agencies in contract review. This is not legal advice, nor a substitute for consulting with your agency attorney, risk manager, or risk pool/insurance company regarding specific contract terms and conditions. The items listed below are in no particular order.

COMPLETED	ITEM
<b>Prior to contract review:</b> confirm compliance with procurement rules (if applicable) <a href="#">MRSC – Contracting and Competitive Bidding</a>	
	<b>1. Contracting Party:</b> list type of business (LLC, corporation, sole proprietor, etc.), location of business (WA or out of state), and contact information.
	<b>2. Contract Period:</b> start & end date (3-5 max term recommended).
	<b>3. Description of Services:</b> scope of work including specific deadlines and deliverables.
	<b>4. Payment Terms:</b> interest on late payments max 12% per year ( <a href="#">RCW 19.52.020</a> ), no retroactive payments, consider price escalation term if goods subject to potential tariffs, no advance payment with exceptions: <a href="#">RCW 43.88.160(5)(e)</a> (state equipment maintenance); <a href="#">RCW 42.24.035</a> (subscriptions up to 3 years, postage, books, periodicals for state & local governments); <a href="#">RCW 42.24.080</a> (pursuant to agreement for local government).
	<b>5. Governing Law:</b> Washington law (contract enforcement can be more challenging if laws out of state/country apply).
	<b>6. Venue:</b> where legal dispute is heard – recommend County Superior Court or Federal Court in Washington State (not favorable to agree to courts out of state/country).
	<b>7. Dispute Resolution:</b> voluntary mediation before litigation is common; binding arbitration clauses are not favored (limit ability to litigate in court).
	<b>8. Assignment:</b> contract rights and obligations not assigned to others by either party without prior written consent of parties.
	<b>9. Subcontractors:</b> must comply with terms and conditions of contract.
	<b>10. Liability:</b> each party is responsible for their own acts/omissions (negligence or intentional acts).
	<b>11. Limitations of Liability:</b> generally disfavored – watch for \$ limits of contract claims or limits to total amount of contract, do not limit remedies to enforce contract, and do not shorten timeframe to bring contract claim (6-year statute of limitations under state law).
	<b>12. Liquidated Damages:</b> set amount of money to be paid for breach of contract (typically seen as daily/weekly rate for project delays in construction contracts). Ensure damages are reasonable and not penalizing.
	<b>13. Indemnification:</b> contracting party to release, defend, indemnify, and hold harmless agency for liability arising under contract and against third party claims. Agencies typically do not release, defend, indemnify, and hold harmless the contracting party (only for agency's negligence or intentional acts). For construction contracts, ensure clause covers mutual negligence of both parties and avoids indemnification based only on indemnifying party's sole negligence (see <a href="#">RCW 4.24.115</a> ). Consult with agency attorney to negotiate.
	<b>14. Insurance:</b> specify insurance requirements of contracting parties, including appropriate type of coverage and limits for risk, proof of coverage (certificate of insurance listing agency as an additional insured if possible), and advanced notice regarding cancellation of policies.
	<b>15. Termination Clause:</b> for convenience and cause (breach of contract), early termination allowed, right to terminate due to lack of funding, other party to pay all costs accrued as of date of termination, and notice provisions – how notice will be provided, to whom, and effective date.

COMPLETED	ITEM
	<b>16. Renewal:</b> automatic renewal disfavored, renewal terms outlined in contract (renew before original agreement is expired).
	<b>17. Data Use, Security, and Management:</b> identify what data is being shared with contracting parties and third parties, who has access, data handling/protection terms, records retention requirements, contractor data destruction obligations, notice of known or suspected data breach within 48 hours (or other agreed upon timeframe), data breach notifications per <a href="#">RCW 19.255</a> and <a href="#">RCW 42.56.590</a> , contracting party to follow state and federal privacy laws, and indemnify agency for data breach including third parties.
	<b>18. Independent Contractor Status:</b> contracting party is an independent contractor, not authorized to act on behalf of agency.
	<b>19. Confidentiality:</b> non-disclosure & exclusivity language disfavored, agency will maintain confidentiality to the extent permitted under Public Records Act, <a href="#">RCW 42.56</a> .
	<b>20. Public Records Act (PRA):</b> parties acknowledge that agency is subject to PRA, contract itself and work produced for agency under contract are public records, and how public records requests will be handled if received (third party notice).
	<b>21. Dates:</b> clarify business days or calendar days to avoid confusion with deadlines.
	<b>22. Force Majeure:</b> contract obligations excused or suspended due to reasons beyond parties' control including pandemics, acts of nature, war, etc. (make sure this provision is mutual – applies to both parties).
	<b>23. Severability:</b> if one provision of agreement is invalid, remaining terms are severable and fully enforceable.
	<b>24. Warranties:</b> contracting party guarantees work, free from defects (broad disclaimers of warranty, “as is” or “buyers beware” clauses are disfavored).
	<b>25. Use of Name:</b> do not allow use of agency’s name in advertising or publicity materials without advanced written permission.
	<b>26. Other Terms and Conditions:</b> beware of hyperlinks to other terms that are subject to change without notice (such as MSA – Master/Main Subscription Agreement, privacy agreements, etc.). Save, edit, and attach additional terms/agreements to contract (common in software agreements).
	<b>27. Industrial Insurance Immunity Waiver:</b> contracting party waives immunity under <a href="#">Title 51 RCW</a> to ensure injured workers can pursue legal action for damages beyond workers’ compensation benefits. Clause must state that the waiver was mutually negotiated.
	<b>28. Attorneys’ Fees:</b> prevailing party’s attorney’s fees and costs paid by the other party (if contract dispute).
	<b>29. Compliance With Law:</b> contracting party must comply with all applicable federal, state, and local laws.
	<b>30. Revisions/Amendments:</b> only in writing by mutual agreement (not verbal).
	<b>31. Entire Agreement:</b> this contract (together with attached exhibits/attachments) represents the entire agreement between the parties and supersedes prior verbal or written agreements.
	<b>32. Signature Authority:</b> persons signing the contract have authority to bind the contracting party or agency. Electronic signatures may be appropriate as agreed ( <a href="#">RCW 1.80</a> ).*
<b>Other Specific Contract Considerations:</b>	
	<b>1. Bills of Sale:</b> identify who bears the risk of loss, damage, or destruction during shipment.
	<b>2. Public Works:</b> provisions on prevailing wages, bonds, and retainage.
	<b>3. Interlocal Agreements:</b> between two or more public agencies pursuant to <a href="#">RCW 39.34</a> , so long as each agency has separate authority to perform activities, must be approved by governing body, and signed agreement filed with county auditor or posted on website (or other electronically retrievable public source).
	<b>4. State Contracts Anti-Discrimination:</b> <a href="#">RCW 49.60.530</a> requires state contractors and subcontractors for public works or goods or services to include specific discrimination language.

\* Agency attorney may approve contract “as to form” which means that the contract is legal. This does not mean the contract terms are the most favorable to the agency.