

CHAPTER 107
UNIFORM TERMS AND CONDITIONS FOR SERVICE CONTRACTS

[Prior to 9/17/03, see 401—Chapter 13]

11—107.1(8,8A) Authority and scope. In accordance with Iowa Code section 8.47, this chapter is adopted to provide uniform terms and conditions for departments and establishments to use in service contracts and to provide a mechanism for departments and establishments to seek approval to use in their service contracts special terms and conditions that are not included in this chapter. The terms and conditions generally require departments and establishments to include performance criteria when executing service contracts. Iowa Code section 8.47, which is part of the accountable government Act relating to service contracts, and these rules utilize the definition of “department and establishment” that is found in Iowa Code chapter 8.

11—107.2(8,8A) Applicability. This chapter shall apply to all departments and establishments purchasing services unless otherwise provided by law.

11—107.3(8,8A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Department and establishment*” and “*department*” or “*establishment*” means any executive department, commission, board, institution, bureau, office, or other agency of the state government, including the state department of transportation, except for funds which are required to match federal aid allotted to the state by the federal government for highway special purposes, and except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

“*Efficiency measures*” means unit cost or level of productivity associated with a given service, product or activity.

“*Input measures*” means the amount of resources invested, used or spent for services, products or activities.

“*Outcome measures*” means the mathematical expression of the effect on customers, clients, the environment, or infrastructure that reflects the purpose of the service, product or activity produced or provided.

“*Output measures*” means the number of services, products or activities produced or provided.

“*Performance measures*” means measures that assess a service, product or activity. Performance measures include quality, input, output, efficiency, and outcome measures.

“*Quality measures*” means the mathematical expression of how well the service, product or activity was delivered, based on characteristics determined to be important to the customers.

“*Service*” or “*services*” means work performed for a department or establishment or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying services; construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; architectural services; information technology consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, pharmacists, engineers, and architects; or

2. Services provided by a vendor to accomplish routine functions. These services contribute to the day-to-day operations of state government. By way of example and not by limitation, these services may include the following: ambulance service; charter service; boiler testing; bookkeeping service; building alarm systems service and repair; commercial laundry service; communications systems installation, servicing and repair; court reporting and transcription services; engraving service; equipment or machine installation, preventive maintenance, inspection, calibration and repair; heating, ventilation and air conditioning (HVAC) system maintenance service; janitorial service; painting; pest and weed control service; grounds maintenance, mowing, parking lot sweeping and snow removal service; towing service; translation services; and travel service.

“*Service contract*” means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists and these rules apply. “Service contract” includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision or rendering of services.

“*Service provider*” means a vendor that enters into a service contract with a department or establishment.

11—107.4(8,8A) Uniform terms and conditions for service contracts. All service contracts entered into by a department or establishment shall include, at a minimum, the following terms:

107.4(1) Payment clause. The contract shall include a clause or clauses describing the amount or basis for paying consideration to the party based on the party’s performance under the service contract. The payment clause(s) should be designed to work in harmony with any monitoring clauses and any postcontract review procedures. All payment clauses shall be consistent with 2003 Iowa Code Supplement section 8A.514. The payment clause(s) should also be designed to work in harmony with the outputs, outcomes or any combination thereof desired by a department or establishment. The payment clause should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable kinds of payment clauses include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

a. A payment clause in which the department or establishment describes the limit of the total fee to be paid, and the fee is divided between a base fee and an at-risk fee. The base fee is the amount of fee the service provider will earn for minimal performance in the completion of the contract. The at-risk portion of the fee is the incremental fee the service provider will earn as the service provider meets the performance criteria identified in the contract. The amount of the fee in both instances may be stated in terms of a percentage, an amount, or some other term. Incentives and disincentives may be used to affect the payment of the base fee and the at-risk portion of the fee. The amount of the incentive or disincentive may be stated in terms of a percentage, an amount, or some other term. The payment of the fee shall be based upon the outcomes or outputs achieved or the performance criteria satisfied.

b. A payment clause based on meeting minimum requirements for performance criteria, outcomes, or outputs with incentives and disincentives to achieve other desired outcomes, outputs or performance criteria. The incentives may be stated in terms of a percentage, a fixed amount, or some other term. Up to 100 percent of the incentive may be placed at risk in order to meet or exceed performance criteria or achieve desired outcomes or outputs. Disincentives may be employed to achieve performance criteria or outcomes. Disincentives may be stated in terms of a percentage, a fixed amount, or some other term. Disincentives may include payments to the department or establishment for performance failures up to 100 percent of the fee the service provider expects to earn from performance of the contract.

c. A payment clause based on a straight contingency fee with the entire fee at risk depending on outcomes achieved or outputs obtained or performance criteria satisfied.

d. A payment clause based on a base fee and an amount retained by a department or establishment to ensure performance criteria described in the contract are satisfied or outcomes are achieved or outputs are obtained. If the vendor meets the performance criteria or outcomes or outputs, then a department or establishment may pay some or all of the portions of the fee retained as an incentive or disincentive and as provided for in the contract.

e. A payment clause based on a base fee and a contingency fee depending on the outcomes achieved, outputs obtained, or performance criteria satisfied. The base fee may be stated in terms of an hourly fee, a fixed-price fee, or a not-to-exceed fee. The contingency fee may be stated in terms of a percentage of a recovery.

f. Any other payment clause determined by the department or establishment to be suitable and appropriate for the service contract that bases the amount or basis for paying consideration to the service provider based on the service provider's performance under the service contract.

107.4(2) *Monitoring clause.* The contract shall include a clause or clauses describing the methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. Monitoring should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable methods of monitoring may include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

a. One hundred percent inspection.

b. Random sampling.

c. Periodic inspection.

d. Customer input.

e. Invoices itemizing work performed.

f. A monitoring plan determined by the department or establishment to be appropriate for purposes of the service contract and that includes methods to effectively oversee the service provider's compliance with the service contract by the department or establishment.

107.4(3) *Review clause.* The contract shall include a clause or clauses describing the methods to effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to Iowa Code chapter 8E. Performance measurement should be appropriate to the nature of the contract as determined by the department or establishment. The measures below are not intended as an exhaustive or prescriptive list; they are provided as examples. The review clause for performance may include:

a. Outcome measures.

b. Output measures.

c. Efficiency measures.

d. Quality measures.

e. A review plan determined by the department or establishment to be appropriate for the purposes of the service contract and that includes methods to effectively review performance of a service contract.

107.4(4) *Other terms.* The contract shall include:

a. Where appropriate, a nonappropriation clause;

b. A clause describing the duration of the contract;

c. Clauses requiring the service provider to comply with all applicable laws;

d. Where appropriate, an insurance clause;

e. A clause, exhibit, or other document that describes the scope of services to be performed;

f. A termination clause;

- g.* A default clause, where appropriate;
- h.* An independent contractor clause;
- i.* Where appropriate, a clause prohibiting inappropriate conflicts of interest on behalf of the service provider;
- j.* Other clauses as deemed appropriate by the department or establishment entering into a service contract.

11—107.5(8,8A) Special terms and conditions. Rule 107.4(8,8A) does not apply to service contracts containing special terms and conditions adopted by a department or establishment for use in its service contracts with the approval of the department of management, in cooperation with the office of the attorney general and the department of administrative services as provided for in 2003 Iowa Code Supplement section 8.47(2).

11—107.6(8,8A) Exclusions and limitations.

107.6(1) These rules do not apply to contracts for both goods and services when the predominant factor, thrust and purpose of the contract as reasonably stated is for the purchase of goods with service incidentally involved. However, in no event shall departments and establishments designate contracts as contracts for goods to avoid the application of these rules.

107.6(2) These rules do not apply to service contracts utilizing funds that are required to match federal aid allotted to the state by the federal government for highway special purposes.

107.6(3) These rules do not apply to service contracts entered into as the result of an emergency procurement in accordance with 11—106.8(8A), unless the emergency procurement results in the extension of an existing contract that contains performance criteria.

11—107.7(8,8A) Effective date. This chapter shall apply to service contracts with a starting date on or after October 1, 2002.

These rules are intended to implement 2003 Iowa Code Supplement sections 8.47 and 8A.104.

[Filed 8/2/02, Notice 4/3/02—published 8/21/02, effective 10/1/02]

[Filed emergency 8/29/03—published 9/17/03, effective 9/2/03]

[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]

CHAPTERS 108 and 109

Reserved