

## **Part I Chapter 32 Contract Changes**

- A. General.** Changes to contracts may require an amendment or a change order depending on the type of change as described below. In addition to making necessary changes to the contract in SAP or SRM, a change notice should be published to eMarketplace documenting the specific amendment or change order.
- B. Amendment.** An amendment shall be issued for any change to the terms, conditions, requirements, or costs (increases/decreases) of a contract, except for change orders. Amendments shall require the signatures of the contractor and the same Commonwealth officials as the original contract. The maximum amount of a contract must be amended when additional funds or terms increase the monetary value of the original contract, unless it is appropriate to use a change order or funding adjustment. To be valid, an amendment that increases the cost of a contract must meet all the criteria necessary for a separate contract, including additional commodities or services. Extensions of contracts generally require an amendment. Amendments are not required, however, to renew or extend if an option to renew or extend appears in the original contract.
1. Amendments require the signatures of the contractor and the same Commonwealth officials that were on the original contract or order.
  2. In order for an amendment to be valid, both parties must receive legal consideration (some interest, gain, benefit, or advantage).
  3. All proposed amendments to extend the term of a contract should be closely scrutinized and reviewed when the option to extend was not included in the original contract. Amendments to extend the term of a contract may require approval as a sole source.
- C. Change Orders.** Change orders are essentially notices to contractors of a change which one or both parties have the option to change under the contract or purchase order. They can also be used as a notification of a correction.
1. Changes in quantities can be effectuated through a change order if the contract gives the Commonwealth the right to purchase additional quantities.
  2. Contract renewals and extensions can be effectuated through change orders if the contract gives the Commonwealth the option to renew or extend. The option may be at the Commonwealth's sole discretion or it may require mutual agreement. If mutual agreement is required, a writing must be obtained from the contractor which indicates the contractor's agreement to renew.
  3. A change order may also be used to make corrections of grammatical, numerical, or other errors in the purchase order/contract.
  4. If there is a price change clause in the contract or purchase order, changes in prices can be accomplished through contract change notices or change orders and not through an amendment.

5. To make changes in the supply or service within the scope of the contract.
6. To exercise an option(s) to purchase additional units of supplies as specified in the contract.
7. To modify the time of performance that does not alter the scope of the contract to extend the completion date beyond the expiration date of the contract or any renewals or extensions thereof.
8. Change orders should not be used to amend contracts or purchase orders.
9. Change orders must be signed by the purchasing agency contracting officer. For change orders to contract purchase orders, the ordering agency's contracting officer must sign. (Agencies are prohibited from making any changes to a statewide requirements contract but can use the change order form to make authorized changes to its contract purchase orders.) Comptroller approval may be required if additional funds need to be encumbered.
10. In order to be effective, the change order must be sent to the contractor and a copy provided to the agency comptroller and the Treasury Department.
11. Any change orders issued to renew a contract must be signed and issued prior to the expiration of the contract.

**D. Other Changes.**

1. **Funding Adjustments.** Internal service contract adjustments can be used for adjustments to the total cost of a services contract when the services provided are based on estimated usage amounts, i.e., copiers, snow removal or quantities.
  - a. **Increase in Total Cost.** An adjustment increasing the total cost of a contract needs only the approval signature of the agency head or designee and the encumbrance or the electronic verification of funds by the comptroller if the contract states the units of service were estimated.
  - b. **Decrease in Total Cost.** Adjustments require the approval signature of the agency head or designee and the encumbrance or the electronic verification of funds by the comptroller when the total cost of a contract is reduced or the contract is terminated absent other statutory or regulatory requirements. Agencies shall provide written notification to vendors for all contract cost reductions. Copies of the correspondence shall be provided to the using agency comptroller and the Treasury Department for account liquidation purposes.
2. **Changes in Accounting Code.** Changes in accounting code require only purchasing agency signature and comptroller approval.
3. **Technical, Corrective Changes.** While changes to accomplish obvious grammatical, numerical, or other obvious errors and omissions require only purchasing agency signature and comptroller notification, it is suggested that

agencies use the change order form to provide notification to the contractor and opportunity for dissent.

## **E. Changes in Contract Party.**

**1. Assignments.** Assignments are transactions where the named contractor assigns all or some of its rights and duties in one or more contracts to another contractor. Each contractor remains in existence following the transaction.

**a. Limited Assignments – Assignments of Payments.** If the named contractor wants the agency to pay the contract payments to a different contractor, the named contractor must sign a document assigning those payments. The document, which may be a letter, must be signed by an individual authorized to act on behalf of the assigning contractor (assignor). Upon receipt of the properly signed assignment document, the agency must pay the assignee as directed by the assignor. Written acknowledgement of the receipt of the assignment should be sent to the assignor with a copy to the assignee. The agency has no right to approve or disapprove of the assignment. If the assignment document contains terms and conditions that were not a part of the original contract, the agency should notify the assignor of its rejection of the assignor's attempt to amend the contract.

**(1)** The agency must request the creation of a "902" Partner Record. This is done by completing and submitting via email a [902 Partner Record Request Form](#) to the Payable Services Center at [RA-PSC\\_Supplier\\_Requests@pa.gov](mailto:RA-PSC_Supplier_Requests@pa.gov). (In a case of an Assignor with multiple Assignees, please complete an individual request form for each Assignee.)

**b. Full Assignments – Assignments of All Contract Rights and Duties.** If a named contractor wants all of its contractual rights and duties to be transferred to a different contractor, the named contractor must provide a copy of an assignment document signed by the named contractor (the assignor) and the proposed new contractor (the assignee). The agency has the discretion to approve or disapprove the proposed full assignment. The agency should not approve the proposed assignment unless the agency is satisfied that:

**(1)** The new contractor is responsible; (This determination shall include the evaluation required under [Management Directive 215.9, Contractor Responsibility Program, Amended](#)).

**(2)** The new contractor can provide the supply, service, or construction as well as, or better than, the named contractor; and

**(3)** The assignment document requires the new contractor to provide the required supply, service, or construction in accordance with the original contract terms and conditions. Upon approval/disapproval of the proposed assignment, the

agency must immediately notify the assignor, in writing, with a copy to the assignee. The assignment document transfers all of the named contractor's rights and duties, without reservation. The agency must provide copies of the written assignment and the agency approval to the agency comptroller and to the Treasury Department, so that the payments can be made properly. Upon approval of the assignment, the assignor no longer has any rights or duties in the contract. The agency must look to the assignee to perform under the contract and must pay the contract payments to the assignee.

## **2. Changes in Organization Ownership.**

**a. Merger.** Mergers are transactions where one business organization, by operation of law, takes over another business organization, including all of its existing contracts. Only one organization – called the successor or surviving organization– survives the transaction. Mergers do not require a contract amendment, and the agency has no power to disapprove the transfer of the contract rights and responsibilities. If the surviving organization wants to change the name and address to which contract payments are made, it must notify the agency, in writing, that a merger has occurred. The notice should include the merger document that the surviving organization is required to file with the Pennsylvania Department of State. Upon receipt of the notice and the merger document, the agency must pay the surviving organization. Written acknowledgement of the receipt of the notice should be sent to the surviving organization. The contractor must also follow the instructions below in Section 3 Name Changes.

**b. Consolidation.** Consolidations are transactions where a newly created organization, by operation of law, takes over two or more organizations, including all of their existing contracts. Only one organization – the newly-created successor organization – survives the transaction. Consolidations do not require a contract amendment, and the agency has no power to disapprove the transfer of the contract rights and responsibilities. If the successor organization wants to change the name and address to which contract payments are made, it must notify the agency, in writing, that a consolidation has occurred. The notice should include the consolidation document that the successor organization is required to file with the Pennsylvania Department of State. Upon receipt of the notice and the consolidation document, the agency must pay the surviving organization. Written acknowledgement of the receipt of the notice should be sent to the surviving organization. The contractor must also follow the instructions below in Section 3 Name Changes.

**3. Name Changes.** If the named contractor wants to change the name to which contract payments are made it must notify the agency, in writing, that a name change has occurred. The notice should include the name change document that the contractor is required to file with the Pennsylvania Department of State.

- a. If a change is required to a company's **Legal Name** or **Employer Identification Number (EIN)**, the contractor must contact the Payable Services Center at 717-346-2676 (or toll-free at 1-877-435-7363).
- b. If a contractor changes their name and the EIN remains the same, then the contractor should fax Payable Services a W-9 or IRS letter that shows their new name and the EIN (which did not change). Payable Services will update the name in SRM and SAP.
- c. If a contractor changes their name (or the name is the same) and the EIN changed, the contractor should go to the [PA Supplier Portal](#) and register as a new supplier. The supplier should then notify Payable Services that their company has changed their EIN number.

Upon receipt of the notice and the name change document, the agency must pay the contractor using its new name. Written acknowledgement of the receipt of the notice should be sent to the surviving organization.

4. **Changes in Organization Ownership – No Change in Contractor Party.** These are changes such as changes to the makeup of the shareholders of a corporation. As long as the contractor's name does not change, no notice to the agency is necessary and no amendment is required.
5. **Consult with Agency Counsel.** Contract party changes can be complex and contractor representatives themselves may mischaracterize or misunderstand the transaction in which their company is involved. If the agency procurement officials have any question about dealing with these changes, they are encouraged to contact agency counsel. If Commonwealth interests are adversely affected by such transaction, the Commonwealth may choose to exercise its right under a contract provision to terminate the contract for convenience.

**F. Pen and Ink or Typewritten Changes to Contracts.** Any pen and ink, typewritten, or interlineated change to a contract provision shall be initialed and dated by the authorized representatives of the parties to the contract.

**G. Renewals.**

1. If the original contract includes an option to renew, an amendment is not required.
2. Written notice is all that is required.
3. If mutual consent is required, both parties must sign the renewal notice.
4. The terms and conditions of the contract cannot be changed through the renewal process. Price may change, however, in accordance with any price adjustment clause in the contract.
5. A contract cannot be renewed after the contract term has expired.

**References:**

1. [902 Partner Record Request Form](#)
2. [Management Directive 215.9, Contractor Responsibility Program, Amended](#)
3. [PA Supplier Portal](#)