



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index #: 205.02

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Effective Date: August 1, 2020

Distribution: A

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Approved by: Tony Parker

Subject: CONTRACT MONITORING

- I. AUTHORITY: TCA 4-3-603 and TCA 41-24-109.
- II. PURPOSE: To establish procedures for the monitoring of Tennessee Department of Correction (TDOC) contracts to ensure that the requirements of the contracts are being met.
- III. APPLICATION: To TDOC employees and employees of entities under contract to provide services and programs to the TDOC.
- IV. DEFINITIONS:
 - A. Contract Monitoring Instrument: The document used by designated TDOC staff to measure, evaluate, and document contractor performance and compliance with the terms of designated contracts.
 - B. Essential Instrument Items: Actions or responsibilities of contractors indicated on the Contract Monitoring Instruments that have been determined to require 100% compliance.
 - C. Monitor: TDOC employee(s) authorized by the Commissioner to monitor performance of vendors under contract for the provision of services to the Department, including but not limited to Clinical Contract Monitors, Food Service Monitors, or Institutional Monitors etc.
 - D. Monitoring Report: Report issued by the Monitor to the contractor electronically detailing any finding of non-compliance with the terms of the contract or applicable policies, citing the contract/policy sections that have been violated, the details of the violation, and providing the contractor a space in which to respond.
 - E. Quarterly Compliance Reports (QCR): Reports by Monitors summarizing any new or unresolved findings, the contractor's response/corrective action, verification of corrective action, and TDOC Management comments.
 - F. Routine Instrument Items: Actions or responsibilities of contractors indicated on Contract Monitoring Instruments that may indicate that less than 100% compliance will not automatically result in issuance of a Non-Compliance Report and allowing the Monitor some discretion.
 - G. Sub-recipient Contracts: Contracts for the provision of services between the TDOC and vendors for which all or part of the funding originates with governmental entities outside of the TDOC.
- V. POLICY: Designated staff of the Department, under the guidance of the Inspector General, shall monitor the performance of all providers under contract that provide programs and services.

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VI. PROCEDURES:

- A. The Commissioner/designee shall develop procedures and specific guidelines/instruments for use by designated staff in assessing contractor performance in the delivery of the services to ensure consistent and objective evaluations.
- B. All contracts shall be monitored according to the frequency specified in the contract or more often as indicated by the performance level of the individual contract. Sub-recipient contracts shall be monitored in accordance with the approved Sub-recipient Monitoring Plan. This plan shall be submitted annually for approval to the Department of General Services.
- C. The Inspector General/designee, appropriate Assistant Commissioner/designee, and Chief Medical Officer/designee (if applicable), shall determine which program contracts are to be monitored by the Monitors and the frequency of monitoring.
- D. The Director of Contracts Administration shall ensure that appropriate managers receive a complete copy of all contracts that affect their facility/operation/program. An instrument corresponding to a professional services contract shall be developed prior to the effective date of such contract. Additionally, an existing instrument shall be reviewed and, as may be necessary, changed when applicable TDOC policies or contracts are amended or changed. Contractors will be notified of changes to any instrument immediately.
- E. The Director of Contracts Administration shall ensure that the appropriate directors receive copies of contracts/revisions of contracts in a timely manner, including related documents (i.e., attachments, amendments, and contractor proposals if they are incorporated into the contracts).
- F. Central Office Program Directors shall ensure that the Inspector General/designee and Monitors receive copies of all documents clarifying or in any way pertaining to the contractor's provision of services required by any contract over which they have supervisory capacity or program authority.
- G. Contract Monitoring Instrument Development
 - 1. Instruments shall be developed with assistance from the Office of Inspector General (OIG) Compliance Section for use in evaluating contract compliance for community corrections sites and other contracts. Instruments for contracts shall be developed by the appropriate Director in consultation with the OIG Compliance Section and the Deputy Commissioner of Administration/General Counsel. The format and content of each instrument shall be the responsibility of the appropriate Director. All instruments shall be forwarded to the contractor prior to implementation.
 - 2. The applicable instruments shall be reviewed at least annually by the appropriate Central Office directors designated by the Assistant Commissioner of Prisons and Assistant Commissioner of Rehabilitative Services with assistance provided by the OIG Compliance Section. Assessment items on the instruments shall be indicated thereon as being either routine or essential. The determination as to which are essential and which are routine shall be made in consultation with the General Counsel, on the basis of importance and the degree of need for prompt action towards remediation (notice, response, corrective action, and verification).

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3. Any revision proposed to an instrument as a result of review shall be made in consultation with the Deputy Commissioner of Administration/General Counsel. All revisions to the instruments will be forwarded to the contractor prior to implementation.
4. Instruments for use at community corrections sites operated by contractors and all other contract entities shall assess items for PREA and Title VI training requirements unless these requirements are monitored by compliance inspections or other monitoring activities.

H. Monitoring and Non-Compliance Findings

1. Contract monitoring shall be accomplished by the monitors utilizing the appropriate instruments. Visits shall be scheduled seven days in advance whenever possible or as indicated by the contract. The CA, Warden/Superintendent/designee, administrators, appropriate director, and Inspector General/designee will be advised of the dates of scheduled visits or changes to a previously established visit date.
2. Monitors shall discuss issues and major concerns that may lead to a finding of non-compliance with the administrator, director, Warden/Superintendent, or designee during their review and/or during an exit conference before the Monitor departs the site.
 - a. If the Monitor completes the review on site, a copy of the completed instruments will be given to the Administrator, Director, Warden/Superintendent or designee prior to leaving the site. The final report will be submitted within ten business days. The contractor has ten business days to respond to the final report with a plan of corrective action (POCA). Responses to the Monitor shall be presented to the appropriate executive and administrative staff.
 - b. If the Monitor cannot complete the review prior to leaving the site, he/she shall forward a brief written summary of issues and concerns to the administrator or Director, Warden/Superintendent or designee within five business days of returning from the field review. The contract staff will have three business days to respond to the Monitor before the Monitor prepares the final report. Upon issue of the final report, the contractor has ten business days to respond to the final report with a POCA. Responses to the Monitor shall be presented to the appropriate executive and administrative staff.
3. When non-compliance issues/concerns are first detected and these issues are not considered to reflect serious, dangerous, or systemic problems, the Monitor or CA/appropriate Director may choose to communicate these to the contractor without issuing a formal report. If the issue continues to be a problem or increases in significance, the item will be handled as specified for a routine instrument item.

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4. Significant issues of a nature that threaten security or staff/inmate health/safety need not be associated with a specific instrument item. Such issues shall be documented on the most appropriate instrument in the last row entitled NIN (no item number). The Monitor shall consult with the CA/appropriate Director to determine which category (essential or routine) the finding should be considered for response/corrective action/verification purposes.
5. When the Monitor or CA/appropriate Director notes non-compliance issues/concerns on items listed on the instrument and the decision is made to report them, a final report will be prepared by the monitor.
 - a. The Contractor shall respond to non-compliant items. All responses should include a POCA. If a specific corrective action is accomplished during the time period between the site visit and the drafting of the written response, the response should include documentation to demonstrate that the finding has been addressed.
 - b. If the contractor does not concur with the final monitoring report and does not file a plan of corrective action, the non-compliance item(s) shall be reviewed by the Inspector General and appropriate Assistant Commissioner(s) as applicable for resolution. That determination shall be communicated to the contractor by the Monitor.
 - c. Corrective action/compliance shall be verified immediately upon receipt of the contractor's response, if appropriate, and recorded on the subsequent instrument. Continued monitoring shall be at the discretion of the CA and appropriate Directors.
 - d. A copy of each final monitoring report with response(s) shall be on file with the Monitor, Inspector General/designee, and CA/appropriate Director. The next instrument completed for that contract area shall reference any related findings and the responses generated during the monitoring period.
 - e. The Monitor shall compile a quarterly compliance report (QCR) for each monitoring period. The QCR and the related monitoring reports and responses shall be forwarded to the Inspector General/designee and CA/appropriate Director by the 10th business day of following the monitoring period.
 - (1) Issues noted on the QCR which are not resolved by the time the QCR is submitted shall be noted as "outstanding issues" and shall be included on each subsequent month's QCR until resolution is documented. Follow-up reviews of non-compliant issues shall be completed. For non-compliant items that require on-going corrective action plans, Monitors shall verify that the corrective action plans have been initiated during the monitor's next site visit and noted on the QCR. Repetitive issues may be reported directly to the Inspector General/designee and CA/appropriate Director for a more prompt review of the issue.

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- (2) Unresolved findings of non-compliance shall be reviewed by the appropriate Director, and Inspector General. The unresolved findings shall be discussed with the appropriate Assistant Commissioner(s), Deputy Commissioners/designee, and contractor representatives. Directives for corrective action to be taken, a timeline for completion of corrective action, and contract enforcement action to be taken by TDOC, if any, may be issued to the contractor in the TDOC Management Comments section of the finalized QCR, and/or via memorandum from the Commissioner or other appropriate TDOC management.
 - (3) A copy of the finalized QCR and any directives shall be forwarded to the Deputy Commissioners, the appropriate Assistant Commissioner(s), the CA, appropriate Directors, and other applicable Central Office staff.
 - (a) The contractor shall respond to the Monitor and appropriate Director regarding any unresolved findings of non-compliance and corrective action required within ten business days of receipt of any such request, unless otherwise stipulated on the QCR.
 - (b) If concerns still exist upon receipt of the contractor's response, the CA, Inspector General, and appropriate Director in consultation with the General Counsel may assist the contractor with resolution.
6. The Monitors shall conduct a follow-up review for any item(s) found in non-compliance. This review shall be conducted at the discretion of the CA/appropriate director within 60-90 days of the initial finding. In addition, all items will be re-evaluated on the next instrument completed after the initial finding. The Inspector General/designee shall track all monitoring reports submitted with the QCR for purposes of determining if a breach of contract has occurred. [See VI.(I) below].
7. This process does not preclude the Monitor from addressing urgent issues directly to the contractor and TDOC administration, as appropriate.
8. The CA/appropriate Director may request Monitors to review specific contract requirements for special compliance inquiries.

I. Breach of Contract Process

1. Issues of breach for any contract shall be determined according to the provisions of the contract concerning breach of said contract, after review of the monitoring instrument indicating non-compliance, the notice of non-compliance given to vendor, the response of the vendor, and the adequacy of any corrective action plan indicated, as provided in Section VI.(H) above. The review shall be made by the Inspector General, the TDOC official having primary responsibility for the unit or division receiving the contract vendor's services, and TDOC General Counsel/designee.

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2. If on the basis of such review it is determined that the contract vendor is in breach, the reviewers shall further determine which remedy or remedies available under the contract shall apply. The Inspector General shall be the Commissioner's designee for issuing notice of breach to any contractor.
3. Findings of non-compliance for essential instrument items on monitoring instruments may result in a determination that the contract has been breached regardless of the number of times the non-compliance has occurred. The Department may determine, based on the circumstances of the non-compliance, that the finding should result in either imposition of immediate liquidated damages or a cure period. The Inspector General shall notify the contractor in writing of the breach and prescribe the method for response and verification.
 - a. If determined that immediate liquidated damages are prescribed, liquidated damages shall be assessed beginning the day of the final report and shall be discontinued on the date of the contractor's response/notification of corrective action if the Monitor verifies that corrective action has cured/appears to cure the breach.
 - b. If the Inspector General, in consultation with the Deputy Commissioner of Administration/General Counsel, determines that the situation requires a cure period, the Monitor shall verify the contractor's corrective action by the end of the cure period and notify the CA, and appropriate Director of the results of the verification. If the corrective action is determined not to cure the breach, liquidated damages may be assessed beginning the day after the cure period until the breach is verified as cured.
 - c. Any subsequent non-compliance finding for the same essential item within 12 months may result in a notice of breach and immediate liquidated damages from the day of the breach until the day the Monitor determines that the breach has been cured.
4. The contractor's responses to all breach notifications shall be provided by the contractor on the initial monitoring report attached to the Letter of Notification. All contractor responses shall be provided in writing to the Monitor. The Monitor shall verify receipt and forward to the Inspector General/designee and CA/appropriate Director. The Monitor shall indicate the final disposition of the breach and corrective action taken by the contractor on the Quarterly Compliance Report (QCR).
5. The Monitor shall include a summary of the contractor's response to all Letters of Notification, as well as verification of corrective action, on the QCR.

J. Liquidated Damages Process

1. Any determination of liquidated damages shall be communicated (by the Commissioner) separately and in writing with copies to the Inspector General/designee, contractor, CA/appropriate Director, Deputy Commissioner of Administration/General Counsel, and Monitor.

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2. The monetary damages shall be calculated by the Inspector General in consultation with Deputy Commissioner of Administration/General Counsel and forwarded to the Contractor, and appropriate director and executive staff.

K. Inspections, Audits, and Other Reviews

1. Each contract operation shall be subject to an inspection as specified in Policies #103.07 and #103.07.1. The Commissioner may also order that additional reviews occur at any time. Copies of all compliance inspection reports and the management responses addressing findings of non-compliance related to contract areas shall be provided to the Deputy Commissioners, Assistant Commissioners, appropriate Executive staff, administrators, directors, and the CMD.
2. The TDOC Investigations Unit of the Office of Investigations and Conduct (OIC) may perform investigations into contract issues at the direction of the Commissioner/designee.
3. Other specific area reviews may occur as directed by the Commissioner/designee.
4. Central Office Directors or other TDOC employees whose responsibilities include oversight of programs/procedures which contractors are required to provide shall advise Monitors, the CA, and appropriate Directors in writing of failure of contractors to provide required reports or specially requested materials/documents in a timely manner, as well as any other concerns that may arise concerning contractor performance in their area of responsibility.
5. Institutional contract program staff shall, upon notification, be required to sign in upon entering the facility and sign out upon exiting the facility on Contract Employee Sign-In Sheet, CR-3930, unless the contract specifies electronic time keeping.
 - a. The CR-3930 shall be initialed daily by checkpoint staff or other TDOC staff in a position to verify the contractor's presence.
 - b. On a monthly basis the Contract Employee Sign-In Sheet, CR-3930, will be reviewed and signed by the Associate Warden of Treatment/Deputy Superintendent/designee and submitted by the institutional contract program director as part of their monthly invoice.
 - c. For contracts requiring electronic time keeping the monthly reports will be submitted to the CA or appropriate Director for review prior to payment.
 - d. Central office TDOC staff responsible for approving invoices shall review and reconcile the Contract Employee Sign-In Sheet, CR-3930, for that month to the invoices submitted by the contractor prior to approving invoices for payment.
 - e. Payment of invoices for on-site performance of contract requirements will be dependent on all hours billed being verified by TDOC staff.

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- L. By October 1st each year, the Inspector General/designee shall distribute a summary of recurring non-compliance issues that covers all four quarters of the prior years' monitoring.
 - M. Statewide General Services Contracts in use at any facility shall be monitored by the Warden/Superintendent/designee. If the provision of services is determined to be unsatisfactory, a vendor complaint should be filed in Edison according to established procedures. A copy of any vendor complaints shall be forwarded to the Director of Contracts Administration, the CMD, and a copy shall be retained in the Compliance Manager's office.
 - N. TDOC departmental contracts will be monitored as determined by the approved Sub-recipient Monitoring Plan.
 - O. Information received from outside agencies [i.e., State Fire Marshal inspections, Department of Health sanitation inspections, American Correctional Association (ACA), etc.] that may have a bearing on the assessment of a contractor's performance will be documented and referenced in any subsequent report concerning contractor performance.
- VII. ACA STANDARDS: 1-CO-1B-10.
- VIII. EXPIRATION DATE: August 1, 2023.



TENNESSEE DEPARTMENT OF CORRECTION

Contract Employee Sign-In Sheet

Month _____ Year _____

Contract: _____ Institution: _____

Date	Name	Time-In	Checkpoint Officer Verification	Time-Out	Checkpoint Officer Verification	Comments

***NAMES MUST BE LEGIBLE** Approving AWT/Deputy Superintendent _____ Date _____