

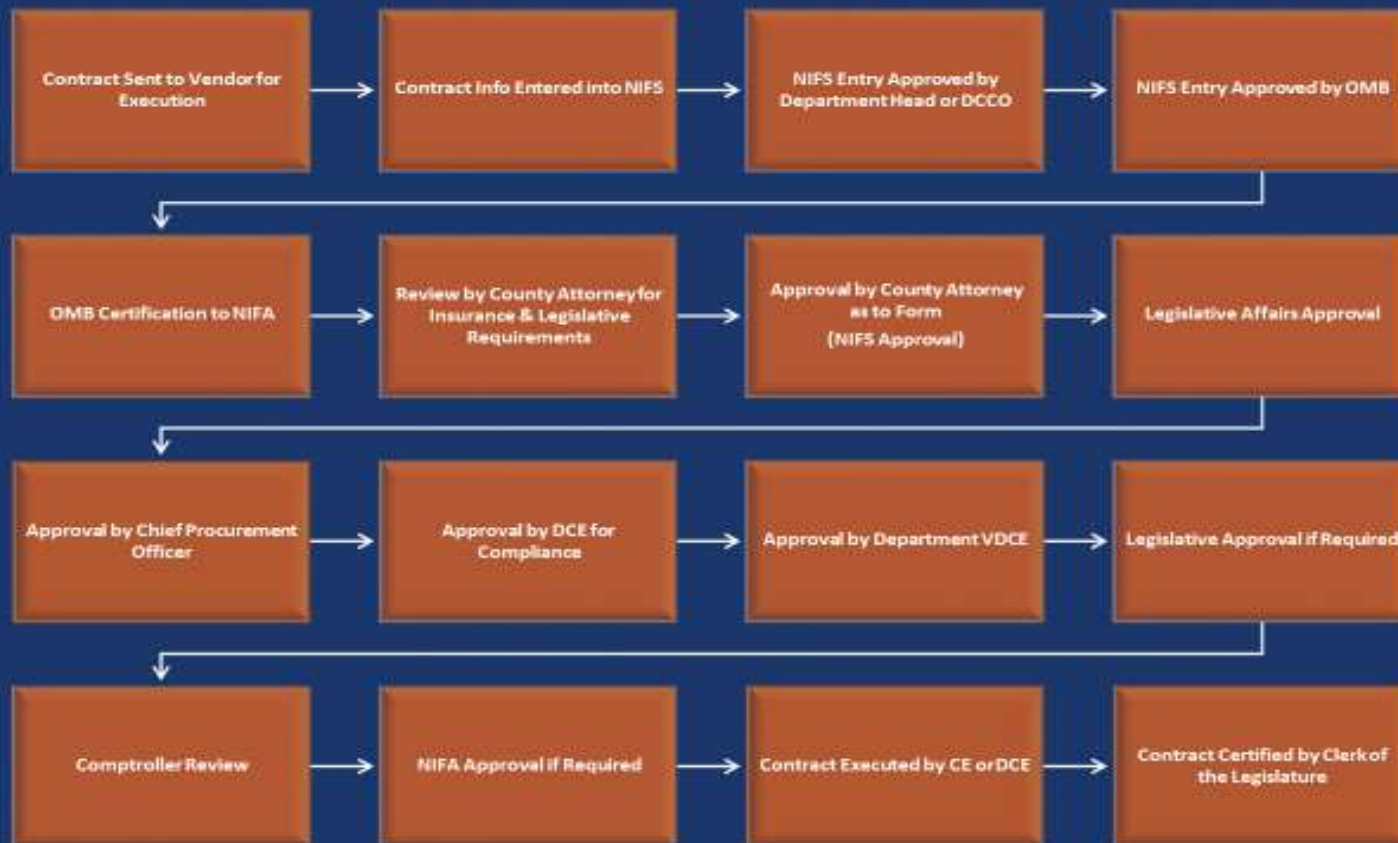
# Contract Review Process

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Office of the Nassau County Comptroller



# The Nassau County Contract Approval Path





# Contract Intake

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- Receives Contracts.
- Reviews NIFS number and Contract number for accuracy
- Reviews tax identification number (TIN) on contract summary and make sure it matches TIN on supporting documentation
- Identifies whether contract is for a **not-for-profit vendor**
- Signatures – makes sure contract is signed and notarized
- Adds Cover sheet for internal routing (only for grants and contracts not in the ECRS)
- Requests NIFA form, if required, and not included

# Vendor Claims – Part I

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- In order to determine whether it would require NIFA review, calculate the aggregate of contracts issued to a particular vendor for the provision of similar services in the preceding 12-month period
- If reviewing advisement or amendment check whether or not maximum in NIFS would be exceeded (“max test”)



# Vendor Claims – Part 2

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- Look for a stated term with a starting date and termination date
  - Contract Language – review contract language payment terms and exhibits to make sure words match the numbers; make sure payment amount and requirements are clear for future claims review
  - If budget attached make sure it matches contract amount
  - Review ECRS summary sheet as to services to be rendered and compare with contract terms, note discrepancies
  - Make sure the deliverables required by the contractor are clearly stated (lack ambiguity)
  - If reviewing an amendment, make sure the amendment references the original contract term as well as the revised term
  - Amendments – review the original contract to ensure amended terms are consistent with non-amended terms
  - Review the payment provisions to ensure consistent with the terms from the prior contract(s)
  - Look for a stated maximum payable amount and encumbrance to match

# Legal Review

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- Review the Contract Routing Sheet and Comptroller Form-Make sure all required information is completed, and appropriate signatures have been obtained and relevant memorandum/evaluations have been attached
- Review Contract Summary page – read and review, especially method of procurement and procurement history sections, and compare the terms in the contract for potential conflicts
- Check to see that all required appendices attached
- Check to see that contract has been approved by all required internal departments
- Check to see if the contract is required to be approved by NIFA or does it fall under one of the various exceptions under NIFA policy? Is the NIFA form included and is it properly completed?
- Verify that voucher section contains Comptroller authority to audit and review and approve any and all claims prior to payment.
- Check to see that that contract contains record retention language including Comptroller authority to audit for a period of no less than 6 years
- Legislative Approval: is it required or not? If yes, verify that has such approval been obtained



## Legal Review (Cont.)

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- Equal Employment Form must be attached
- Verify that notary signature on or near signature pages
- Verify that living wage law language is included
- Verify that compliance with law language is included
- Verify that language regarding indemnification is included
- Verify that assignment/waiver clause is included
- Review termination clause and associated penalties, if any? Verify that termination for convenience (as distinguished from for cause) included
- Verify that severability clause is included

## Legal Review (cont.)

- Verify that executory clause is included, i.e., no liability until all required approvals obtained
- Verify that availability of funds clause is included
- Make sure there are no partial encumbrances, or if there are, there is language that allows for a partial encumbrance or on call/requirements language
- Review language regarding ownership of records
- Verify that language discussing records access by the public (FOIL) is included
- Verify that administrative service charge is included
- Review for ambiguous or conflicting contract language
- General substantive review of the contract



# Accounting

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- Make sure there is enough money in the budget to cover the encumbrance
- Ensure that the contract is input correctly, in NIFS and the ECRS, that the encumbrances are on the correct lines in FAMIS, that the Contract number on the document matches the number in the system. Ensure the amounts listed in the written document match those being encumbered and that the budget coding is appropriate
- Check that the Vendor name and ID on the document in the ECRS and in NIFS match those on the encumbrance
- Routing – ensure that the proper approvals were received before processing, i.e., check for Proper Signatures/electronic approvals

# Common Mistakes

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- Comptroller Approval Form has incorrect vendor information (e.g., Federal Tax ID, Address is incorrect), appropriate sections are not checked off, and/or memo referenced therein is missing.
- Business History Form” and Consultant’s, Contractor’s and Vendor’s Disclosure Form have inconsistent information.



## Common Mistakes (Cont.)

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- Term section of the contract/amendment is incorrect.
- Insurance policies – Certificate of Liability Insurance and/or Certificate of Workers' Compensation Insurance are expired.
- Current maximum exceeded due to previous or pending encumbrances for the same agreement.

# Common Mistakes (Cont.)

- Not to Exceed Maximum incorrect or inconsistent between written and numbered amount in contract or revised maximum amount (CL) incorrectly calculated/incomplete/ incorrectly stated.
- Language of the contract not matching language in appendixes
- Missing essential contract sections, including but not limited, to:
  - a. Voucher language.
  - b. Audit language.
  - c. Indemnification language.
  - d. Advance payment/reconciliation for all years in term explicitly stated.
  - e. Payment provisions missing/unclear.
  - f. Procurement/Environmental review section for IMA's.
  - g. Missing appendices referenced in the agreement.
  - h. Executory clause.
  - i. Contract term/services overlap(s) with existing contract, either from same vendor or another vendor.



## Common Mistakes (Cont.)

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- Contract term expired for period money is being encumbered.
- Conflicting language in the body of the contract (e.g., contract calls for an advance but states all payments to be made in arrears, contract calls for compliance with the procurement laws but will specify a specific brand to be purchased).
- Pricing incorrect or ambiguous.

## Common Mistakes (Cont.)

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- Universal Budget Form/Other Budget Documents do not match to contract total or does not sum from top to bottom.
- Missing Appendix referenced in contract.
- Conflict of interests identified in Principal Questionnaire, Business History Form or other disclosure documents.
- Services description is ambiguous or too broad.
- Contract only being partially encumbered without corresponding partial encumbrance, or “on call”, language, or encumbering more than amount stated in partial encumbrance section.



# Vendor Obligations

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- **INDEMNIFICATION:**

- In the event litigation arises out of services performed by the vendor, the vendor is obligated to indemnify the County, its Officers, employees and agents.

- **TERMINATION:**

- Contracts may typically be terminated by the County for any reason upon thirty (30) days written notice to the vendor.

- **PROTECTION OF CLIENT INFORMATION:**

- To the extent that a vendor's services involves the handling of confidential information, the vendor must protect such information from unauthorized use and disclosure.

## Vendor Obligations (Cont.)

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- **INSURANCE:**

Vendors are required to maintain adequate commercial general liability insurance which names the County as an “Additional Insured” party.

- **RECORDS RETENTION:**

Vendors should be advised that the County requires them to maintain records for a period of six (6) years from the date of termination of the contract.



## Vendor Obligations (Cont.)

- **VOUCHERS:**

Payments shall be made to the Contractor in arrears and shall be contingent upon (i) the Contractor submitting a claim voucher (the “Voucher”) in a form satisfactory to the County, that (a) states with reasonable specificity the Services provided and the payment requested as consideration for such Services, (b) certifies that the Services rendered and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, and (ii) **review, approval and audit of the Voucher by the Department and/or the County Comptroller or his or her duly designated representative** (the “Comptroller”);

# Vendor Obligations (Cont.)

- **TIMELY SUBMISSION OF INVOICES:**

Make sure to look at terms in your contract. Many County contracts contain provisions relating to when an invoice must be received (E.g., many contracts require invoices to be submitted within three months of the work being performed).

Be sure to submit timely invoices to avoid problems receiving payment.

Payments are contingent upon the submission of a claim voucher in a form acceptable to the County verifying the delivery of the services rendered for which payment is being sought.

- **FOIL LAW:**

Vendors should be reminded that information may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("FOIL Law").



# Living Wage Law

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- The purpose of the Living Wage Law:

To ensure that employees of companies that Nassau County does business with are earning the living wage, receiving health benefits or a health benefit supplement and full-time employees receive 12 paid days off a year.

- The current Living Wage as of August 1, 2018, is \$16.41 an hour without health benefits or \$14.27 per hour with health benefits. This rate will stay in effect until July 31, 2019.
- Nassau County Living Wage Law applies to all County Vendors, with certain exceptions.

## Living Wage Law (Cont.)

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- **Exclusions Include, but are not limited to:**

Employees under the age of 18 who work in an after-school/summer program and who are dependents of an adult;

Employees in a bona fide training program consistent with state/federal law who do not displace an employee; and

Employees who are disabled and covered by current sub-minimum wage certificate from the U.S. Department of Labor.

- To ensure you are in compliance with the provisions of the law or download previous Living Wage audits, please visit the Comptroller's website at <https://www.nassaucountyny.gov/1597/Living-Wage>



## Living Wage Law (Cont.)

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- Remedies for violations of the Living Wage Law include:

Individual employees may sue for damages;

County may suspend/terminate County contract(s);

County may seek the return of any financial assistance awarded by the County;

County may declare the vendor ineligible for future County contracts, financial assistance or leases until the violation is cured; and

County may fine a vendor \$500/week for each violation.