


MEMORANDUM

FROM: Indiana Department of Administration
Jessica Robertson, Commissioner 

DATE: July 1, 2015

RE: Electronic contract records and signatures for State contracts subject to IC 4-13-2-14.1

Purpose

The purpose of this memorandum is to provide state agencies with the statutory basis and legal analysis regarding our determination regarding electronic contract record and electronic signatures for state contracts subject to IC 4-13-2-14.1. Additionally it strives to provide guidance as to how the State's electronic contracting process will work.

The process described in this Memorandum has been reviewed and accepted by the following State agencies or offices having oversight of the State's contracting process: Indiana Department of Administration, Indiana Office of Technology, Office of the Indiana Attorney General, the State Budget Agency, Office of Management and Budget, State Board of Accounts, and the Indiana Auditor of State.

Statutory Background

The Uniform Electronic Transactions Act is a uniform statute preparing state law for the electronic commerce era. Indiana adopted the Uniform Electronic Transactions Act at IC 26-2-8. IC 26-2-8-202 authorizes governmental agencies to determine whether, and the extent to which, they will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.¹

Electronic records, electronic signatures, and electronic contracts are recognized and enforceable under the law. IC 26-2-8-106 provides the following:

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record or electronic signature was used in its formation.
- (c) If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law.
- (d) If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

¹ IC 26-2-8-102 (10) defines an "Electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."

While most private contracts need only the parties to sign the contract for it to be valid, IC 4-13-2-14.1(a) requires that “A contract² to which a state agency is a party must be approved by ... the Indiana Department of Administration ... the budget agency ... and the attorney general.” In addition, Indiana Code 4-13.1-2-2 provides that the Indiana Office of Technology shall “[r]eview ... proposed contracts relating to information technology at the request of the budget agency”, and the Budget Agency has requested that IOT review all such contracts.

Indiana Code 4-13-2-14.1 (c) provides:

The Indiana department of administration may adopt rules under IC 4-22-2 to provide for electronic approval of contracts. Electronic approval may include obtaining the equivalent of a signature from all contracting parties using an electronic method that does not comply with IC 5-24 (the electronic digital signature act), so long as the method allows the party to read the terms of the contract and to manifest the party's agreement to the contract by clicking on an "ok", an "agree", or a similarly labeled button or allows the party to not agree to the contract by clicking on a "cancel", "don't agree", "close window", or similarly labeled button. Rules adopted under this subsection must provide for the following:

- (1) Security to prevent unauthorized access to the approval process.
- (2) The ability to convert electronic approvals into a medium allowing persons inspecting or copying contract records to know when approval has been given.

For contracts subject to IC 4-13-2-14.1, the State will send and accept electronic records of contracts and electronic signatures under IC 26-2-8-202. The following process is the only approved process for the electronic signing and approval of state contracts and will govern until such time as IDOA may adopt rules as contemplated by IC 4-13-2-14.1(c).

Use of PeopleSoft and the IDOA Supplier Portal

All electronic contracting will use the PeopleSoft Supply Contract Module (“SCM”). PeopleSoft Financials (branded ENCOMPASS by the State) serves as the State’s official book of record, and is a State-owned and supported system. Through the Indiana Office of Technology, security measures are in place to ensure the preservation of all recorded data with detailed plans for data disaster recovery, including hot and cold sites.

PeopleSoft and the SCM are accessible only through the State’s Supplier Portal administered by Indiana Department of Administration. Each contractor or grantee is required to complete the State’s supplier registration process and obtain a unique PeopleSoft identification password. This process ensures the contractor understands the electronic signature process and agrees to execute contracts in that manner.

The State’s template contracts and grants are loaded into the SCM by IDOA or IOT personnel and will be kept updated without intervention by the agency. Contract templates that have been form-approved by the Office of the Attorney General will also be loaded into the SCM. The SCM allows the contractor, the vendor, and all state agency reviewers to see changes to the standard template language.

Security

A user ID and password is required for each individual who will access contract documents, both during review and negotiation, and at the time of signature.

² “Contracts” include grants, and when used in this document, “contractor” also means “grantee”. While “contracts” also include leases and some other real property transactions, the process described in this document is not available for real property transactions or any other transactions which may require recordation or notarization.

User IDs are unique to each individual. Passwords are set by the State's supplier registration system and provided electronically masked to the user. The user has the control to change his or her password and that password, whether portal or user-created, cannot be unmasked by anyone, including the State.

The person who will be signing the contract electronically will be assigned a unique ID and password in order to access contract documents for signature through the State's Supplier Portal. The name of the person who will be signing and his/her ID and password will be verified as the contract administrator prepares a document for external signature.

Contractors may have multiple signatories, but each individual is required to e-sign documents while logged into the Supplier Portal/PeopleSoft under his/her own user ID and password.

A historical log of all system access and eSignature activity (the contractor and the State) is maintained in SCM records, and identified by user with a date/time stamp documenting the specific action. This information is also displayed within the application through navigation to SCM Document Management and Document History.

eSignature³

The Adobe electronic signature tool in Adobe is used in signing contract documents electronically ("eSignature"). It is an electronic signature under IC 26-2-8, and was selected based on several determining factors including:

- Security in using PDF documents not available with other formats.
- No cost for contractors
- Ease of use
- Compliance with IC 4-13-2-14.1 and IC 26-2-8

The eSignature Procedure

The State prepares a contract document for external electronic signature by the contractor, verifying that the contractor's authorized signatory has been issued a user ID and password to access the State's Supplier Portal. A system-generated notification is sent by email to the contractor as an alert that a contract document requires their review and signature.

The contractor's authorized signatory must log into the State's Supplier Portal using his / her assigned user ID and password, and download the contract document in Adobe PDF.

The contractor uses the Adobe signature tool to place his / her signature on the State's contract document. The contractor has agreed to conduct business electronically at the time of registration on the Supplier Portal. This agreement is affirmed by the following statement which immediately follows the Non-Collusion and Acceptance clause and immediately precedes the eSignature:

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of

³ The system selected does **not** utilize "digital signatures" as defined by IC 5-24-2-1.

Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database
<http://www.in.gov/idoa/2354.htm>.

Completion of the Contract

The signed PDF document is uploaded into PeopleSoft by the contractor.

The State's contract administrator is notified by e-mail when the contractor has signed and uploaded the document. Using the same procedure as the contractor, the State signs the document electronically.

With the eSignatures in place, the contract administrator routes the document for approval, using the electronic process by the necessary oversight agencies (IOT if applicable, IDOA, SBA, OAG) through a predetermined workflow based on the document requirements.

When the required signatures and approvals are complete, the contract administrator dispatches the contract. Each evening, an automatic process in the system will select all newly-executed contracts and send a copy to the contractor and the IDOA Contract Division.

The IDOA Contract Division will move the contract to the State's Transparency Portal for public view.

Legal Effect

Contracts formed using the preceding procedures are deemed in writing and will not be denied legal effect or enforceability solely because they are in electronic form.