

# CONTRACT MANAGEMENT

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Strategic Sourcing & General Services

# What is a Contract?



The TAMUS Contract Management Handbook defines a contract as:

*“a written agreement (including a purchase order) where a contractor provides goods or services and the member pays for such goods and services in accordance with the established price, terms and conditions”.*

**More simply, an agreement to Do or Not Do Something**

# Purpose of a Contract



- Serves as a reference document recording the terms of the agreement to prevent misunderstanding and conflict as to those terms at a later date.
- A contract creates a legal, binding and enforceable obligation between the parties.

# Elements of a Contract



## **Elements of a legally binding contract:**

1. Offer
2. Acceptance
3. Certainty of Subject Matter
4. Consideration
5. Mutuality of Obligation
6. Legal Purpose
7. Competent Parties

# Authority



There are essentially two kinds of authority recognized in the law: **actual authority** (whether express or implied) and **apparent authority**.

- Express Authority: The authority to bind the University is given orally or in writing.
- Implied Authority: Incidental authority, not formal authority. Authority to perform acts reasonably necessary to accomplish a task.
- Apparent Authority: Creates impression that the agent is authorized – but they are not.

# Pecuniary Liability



- An Agent working under Express Delegation may be held to have pecuniary liability if he/she acts beyond their expressed authority.
- Anyone found to be working outside their delegation (“not following the rules”) may incur personal obligation to make good on the contract.

# Departmental Purchasing Authority



- Implemented to allow purchase of goods/services needed immediately
- **≤ \$5,000.00**
- This includes freight charges!
- Re-occurring services may exceed Departmental Authority

# University Rules



- Contract Administration Delegations & Reporting -
  - [http://www.tamuk.edu/ssgs/SSGS/Contracts\\_table\\_of\\_authorized\\_authorized.html](http://www.tamuk.edu/ssgs/SSGS/Contracts_table_of_authorized_authorized.html)
- Policy, Rules and Procedures
  - <http://www.tamuk.edu/policy/index.html>



# Contract Formation



## Monitoring Points

- Deliverables
- Timetables
- Payment Triggers
- Quality of Deliverables
- Reporting

## Typical Terms

- Administrative
- Financial
- Provisions to Allocate Risk
- Statement of Work
- Contract Term, Termination and Dispute Resolution Provisions
- Rights and Ownership of Work Product and Intellectual Property

# Contract Formats



1. **“Four-Corner” Contract**
2. **Purchase Order**
3. **Exchange of Correspondence**

# Statement of Work (SOW)



- **Describes specific activities, objectives and timelines the contractor is agreeing to.**
- **Provides the basic framework of the contract**
- **Roadmap for contract administration**
- **Determines success or failure of a contract**

# Statement of Work (SOW)



## **A well-developed SOW:**

- **is clearly defined**
- **is contractually sound**
- **is unbiased and non-prejudiced toward respondents**
- **encourages innovative solutions to the requirements**
- **secures the best economic advantage using best value**
- **allows for free and open competition to the fullest extent possible**

# Statement of Work (SOW)



## Includes items such as:

- Purpose
- Scope of Work
- Location of Work
- Period of Performance
- Deliverables Schedule
- Applicable Standards
- Reporting
- Acceptance Criteria
- Special Requirements
- Type of Contract/Payment Schedule

## A clear SOW answers:

1. Who?
2. What?
3. When?
4. Where?
5. Why?
6. How?

# Contract Administration



**A key factor in successful contract administration is communication.**

# Role of the Contract Administrator



## **Contract administrators are able to:**

- Understand the requirements of the contract
- Communicate the responsibilities to all parties involved
- Maintain control over the contract performance

## **Contract administrators ensure:**

- Contractual requirements are met
- Goods and services are delivered in a timely fashion
- Financial interests of the member are protected

# Role of the Contract Administrator



## Not Authorized to:

- Instruct contractor to start work before the contract is fully executed (signed by both parties)
- Change the scope of the contract without going through the formal amendment process
- Direct the contractor to perform work not specifically described in and funded by the contract
- Extend the time period for the contract without execution of an approved amendment
- Allow the contractor to incur additional costs over the limit set by the contract



# Contract Reporting



**Contract reporting is required for all contracts and occurs across many levels:**

- **Internal Reporting**

- Executive Management
- Status Reports / Contract Management Plans
- Activity Reports

- **External Reporting**

- Senate Bill 20
- Legislative Budget Board
- Board of Regents
- Contractor Reports

# Senate Bill 20 Requirements



- TAMUK may not enter into a contract if the governing officials, or family member of the governing official, have 1% interest in the vendor or will financially benefit from the contract. \*\*Please disclose any potential conflict of interest to the SSGS Department for review of specific guidelines.\*\*
- All contracts and purchase orders for goods and services from a private vendor must be posted to the internet.
- Contracts not competitively bid, must provide the legislative authority that allowed not bidding out the contract.

# Senate Bill 20 Requirements



- Contracts exceeding a value of \$1 million require contract reporting and verification of compliance with financial provisions and delivery schedules; corrective action plans; liquidated damages. The governing board or authorized delegate must sign the contract.
- Contracts exceeding a value of \$5 million require verification in writing that the solicitation and purchasing methods and contractor selection process comply with state law and university policy
- Purchasing accountability and risk analysis procedures are to be posted on the university's website
- Each contract and all contract solicitation documents must be retained for 7 years, after contract is completed or expires or until all issues (litigation, claim, TPIA request or other action) are resolved.

# Legislative Budget Board



## Texas Government Code

- Major information service contracts exceeding \$1 million must be reported, regardless of funding source.
- Construction projects over \$14,000 must be reported, regardless of funding source.
- Professional service contracts over \$14,000 must be reported, regardless of funding source.
- Consulting service contracts over \$14,000 are exempt from reporting by institutions of higher learning.
- Institutions of higher education are exempt from providing to the Legislative Budget Board copies of major contracts and solicitation.

# Legislative Budget Board



## General Appropriations Act

- All contracts in excess of \$50,000, if paid with appropriated funds, must be reported.
- Institutions of higher education may not spend appropriated funds for contacts in excess of \$10 million until notice is provided to LBB.
- For contracts that fall within \$1 million and \$10 million, for the purchase of goods and services from a private vendor, the acquisition authority must meet the intent of the rider (7.12).
- Emergency purchases require 48 hour notice before payment; other purchases require a 10 day notice before payment.

For additional information, visit the LBB web-site at:

<http://contracts.lbb.state.tx.us/DataEntry/LogOn.aspx>.

# Contract Monitoring



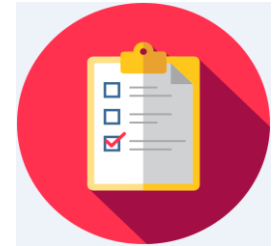
## Risk Factors – Development of Contract

- Small dollar, less complex contracts may require little to no monitoring however more detailed monitoring may be necessary.
- Large dollar complex contracts require more monitoring with specific constant monitoring of deliverables and milestones.
- Vendor/contractor's past performance.
- Turnover in key contractor personnel.
- Experience level of the vendor/contractor with the type of work to be performed.
- Significant issue with the type of payment request required.
- Prior complaints or inquires.

## Risk Factors – Contract Performance

- Multiple schedule delays/slow deliveries.
- Frequent personnel changes or juggling of work assignments.
- Vague or evasive responses to inquiries and status requests.
- Lack of progress on completing deliverable on which other parts of a project depend.
- Request for milestone payments without finalizing deliverables.
- Downplaying seriousness of problems and impact on project completion.
- Lack of preparation or planning for upcoming requirements or activities.
- Failure to return calls or respond to information requests.

# Determining What to Monitor



How will you know you have received what you paid for?

How will you know the contractor is complying with the terms of the contract?

How will you know the contract is complete and determine closure?

How will you know pricing is accurate?

# Payment Approval



- All payments must be made in accordance with Texas Prompt Payment Act, Texas Government Code Chapter 2251, which requires :
  - correct invoices are paid within 30 days from the date the correct invoice was received, goods were received or services were completed, whichever is later and in accordance with the member's invoice review and payment procedures.
- Failing to adhere to the Texas Prompt Payment Act requirements will result in the university incurring interest charges for late payments.



# Payment Approval



When reviewing invoices, ensure:

- vendor/contractor is billing only for goods or services received
- goods have been inspected and accepted
- the invoice is correct and complies with pricing, terms and conditions of the contract and TAMUK's terms and conditions
- the total payments do not exceed the contract limits
- invoices are forwarded to SSGS for processing

# Change Management



- It may be necessary to make changes to the contract. However, changes must be made within the scope, or range, of what was provided in the solicitation.
- If the modifications are significant, a new proposal and a new solicitation is required to guarantee compliance with procurement rules and regulations to avoid denying a qualified vendor a procurement opportunity.

# Change Management



## Types of Contract Changes

- Administrative Change
  - Changing billing instructions
  - Address change
  - Corrections to typographical errors not affecting substance of contract
  - Changes in member personnel assigned to the contract
- Substantive Change
  - Price
  - Delivery schedule
  - Change in key personnel
  - Change in terms/conditions

# Contract Close Out



## **A contract is ready for close out when:**

1. All deliverables, including reports have been delivered and accepted by the member.
  - Compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed.
2. Final payment has been made.
3. All monitoring issues have been resolved.
4. All property inventory and ownership issues are resolved including disposition of any equipment or licenses purchased under the contract.

# Contract Close Out



4. Final acceptance from the Project Manager has been received (if applicable).
5. Contractor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
6. Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.

# Retention Policy



**System Regulation 61.99.01 *Retention of State Records*** lays out the procedures and responsibility for the System Records Management Program and management of the Records Retention Schedule. This schedule lays out the requirements for maintaining all procurement and contract documents.

For further information, please visit <http://policies.tamus.edu/61-99-01.pdf>, or visit the System Records Management page at <http://www.tamus.edu/legal/records-management/>.