

State Procurement Office

Contract Administration

Contract Administration Agenda

- Public Procurement: What's Different
- Definitions
- Contract Administrator Role/Responsibilities
- Contract
- Performance
- Amendments
- Problems
- Termination and Closeout

HRS Chapters 103D and 103F
Methods of Procurement (Source Selection)

Chapter 103D (6 methods)	Chapter 103F (5 methods)
Competitive Sealed Bids (IFB)	None
Competitive Sealed Proposals (RFP)	Requests for Proposals (RFP)
Sole Source	Restrictive Purchase
Professional Services	None
None	Treatment Services
Emergency	Crisis
Small Purchase (<i>less than \$50,000</i>) <i>Purchases between \$15,000 and \$50,000 shall be purchased on HePS)</i>	Small Purchase (less than \$25,000)

About Public Sector Procurement
Why can't we 'Just Do it'

- Like private sector, we want best value **AND** we have additional obligations...
- Our “shareholders” are the taxpayers (everyone).

- 1. We must be open/transparent.**
 - Everyone has a right to know and have easy access
- 2. We must be fair to all qualified vendors.**
 - Everyone has the right to compete.
- 3. We ARE accountable.**
 - Auditable trail
 - Standardized rules and procedures

Definitions

What is a contract?

- **...all types of agreements, regardless of what they may be called, for the procurement or disposal of goods or services, or for construction. (HRS 103D-104)**
- ...all types of agreements, regardless of what they may be called. (HRS 103F-102)
- Includes MOU's MOA's PO's, etc.

More Definitions

- MOU = Memorandum of Understanding
- MOA = Memorandum of Agreement
- PO = Purchase Order

Definitions

What is contract administration?

- All functions related to a given contract
- from the time the contract is awarded
- until the work is completed, accepted, and all payment has been made, or
- until the contract is terminated, and disputes have been resolved.

Definitions

Contract Administrator

- The person designated to manage the various facets of contracts to ensure the contractor's total performance is in accordance with the contractual commitments and obligations to the purchasing agency are fulfilled.
(HAR Section 3-122-1)

Contract Administration isn't anything new

***We just think we don't have the time
for it***

80/20 rule

Planning, Procurement and Contracting:

A Team Process

- **Coordinator for the Solicitation**
- Planning staff
- Users
- Fiscal staff
- Evaluators
- **Contract administrator**
- Monitoring staff
- Community: clients, providers, interested community members
- Chief/administrator/supervisor

Contract Administrators Need to be Involved from the Beginning

- Contract administration begins when the specifications are being developed.
- The contract administrator should be identified **and** be part of the team.
- The contract administrator should be very involved in the development of the specifications and criteria that will be used in determining whether the obligations of the contract have been met.

Public vs. Private Contract Administration

- Public agencies are normally limited to what the law allows.
- Private agencies may do whatever the law does not prohibit.
- Private agencies report to shareholders.
- Public sector 'shareholders' are everyone.

Key Issues

- Well written contract
- Focus on cost containment
 - Method of compensation
- Familiarity with and understanding of the agreement
- Legal language does not replace proper administration
- Reduce Risk

Good Contract Administration

- Ensures that the procurement process results in organization getting what it pays for.
- One of the biggest areas that could be improved for most government agencies

Preparation Prior to Solicitation & Award:

a Major Impact on Contract Administration

- Evaluation of what is out there (the market)
- Source selection method
- Timing
- Contract planning and formation
- Determination of milestones and deliverables
- Federal reporting requirements

The Contract What it Does

- Ensures agreement contains essential elements
 - Federal, state, and local regulations are met
 - Does not violate constitutional provisions
 - Statement of work and terms are sufficiently clear *who, what, when, where, how (why is helpful, too)*
 - Ensures termination ability and rights

Know Thy Contract and the Process

- Familiarity through the procurement process
- Read the contract!
- Read any documents referenced (statutes manuals, etc.)
- Read and keep a copy of the solicitation and proposal/offer readily available.
- Know standard terms and conditions.
- Know special provisions.

A Well Written Contract is Not Enough

- There will be facts/circumstances not apparent/directly addressed in the contract.
- Contract success is impacted by circumstances beyond the contract language.

Role of the Contract Administrator

- Manages the day to day oversight of the contract
- Is the expert regarding contract requirements
- Point of contact for correspondence
- Provides technical guidance to contractor and users
- Maintain contract administration file/documentation
- Ensures the goods /services are received in accordance with contract
- Responsible for ensuring other team members are informed of significant events, issues/problems (fiscal, procurement section, program managers, etc.)

Contract Administrators:

- Know the Contract!
- Monitor Contractor Performance
- Document, document, document!
- Contract Amendments/Supplements/Extensions
- Determine when a deliverable is delivered. (Acceptance)
- Payment
- Problems
 - Know the signs
 - Develop the solutions
- Termination
- Contract Closeout

Know thy Contract

- Who is responsible for what and when?
 - Rights, duties and obligations of the parties
- What are the milestones and deliverables and when are each required?
- How is payment to be made?
 - conditions

Monitoring Contractor Performance

- Levels of monitoring will vary depending on:
 - Contract type
 - Complexity
 - Funding
 - Past experience
 - Risk
 - Nature of the contract
 - Urgency, critical service, etc.

Monitoring Contractor Performance

(continued)

- Start with a meeting/contract orientation
- Review deliverables/ milestones
 - Federal reporting requirements?
- Identify Purchasing agency responsibilities and requirements/obligations
 - Keys to deliver? Passwords?
- Contract expiration dates
 - Create tickler files
- Not-to-exceed amounts

Monitoring Contractor Requirements

- Insurance certificate(s) (expiration)
- Professional License(s) (expiration)
- Wages-
 - HRS Section 103-55 (Services), or
 - HRS Section 103-55.5 (Public Works)
- Other

Contracts for Services...

HRS Section 103-55

- Before entering into a contract to perform services in excess of \$25,000 for any governmental agency, the vendor shall certify:
 - Services shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.
 - Compliance with labor laws.
- No contract to perform services shall be granted unless the conditions are met.
- It is the duty of the governmental contracting agency awarding the contract to enforce this requirement.

Contracts for Services

HRS Section 103-55 *Continued*

- Applies to all services contracts over \$25,000, including ambulance service and janitorial service.
- Does not apply to contracts for:
 - Managerial, supervisory, or clerical personnel; supplies, materials, or printing; utility services; certain personal services; certain professional services; food services to schools, etc.
- Be sure to check during the contract.

Public Works Construction Contracts **HRS Section 103-55.5**

- Before entering into a public work construction contract for a project over \$2,000, subject to HRS Chapter 104, the vendor shall certify :
 - Individuals performing on the contract shall be paid not less than the prevailing wages determined by the DLIR director; and overtime plus fringe (weekends, State Holidays; over 8 hours on other days; and
 - Compliance with all applicable federal and state laws of the relating to workers' compensation, unemployment compensation, payment of wages.

Public Works Construction Contracts **HRS Section 103-55.5 (Continued)**

- No contract for construction of any public work project in excess of \$2,000 shall be granted unless all the conditions of this section are met.
- It shall be the duty of the governmental contracting agency awarding the contract to enforce this section.
- **Be sure to check during the contract.**

When Vendors/Providers Perform Poorly:

- Disrupts our operations.
- Prevents us from complying with mandates.
- Makes our agency fail in the eyes of our customers (other government agencies , the public, etc.)
- Increases our costs.
- **Managing vendor performance should be a strategic function and focus.**

Monitoring

Not the same for every contract

- Security services
 - Screen potential guards
 - proper checks completed
 - Observation / Unannounced walk through
 - Review security logs
- Consulting
 - Draft and final reports
 - Interview with team using services

Monitoring

for various types of Contracts

- **Health/Human Services**
 - Peer review team
 - Random on-site observation
 - Patient complaints review
 - Satisfaction surveys
 - User procedures for reporting problems
- **Goods**
 - Inspection
 - Procedure/forms for reporting complaints

When is a Deliverable Delivered?

Acceptance

- Verify and document:
 - Timely delivery
 - Quality -prior to acceptance!
 - Defects not discovered during inspection
 - Not readily discernable through reasonable means of examination or testing (hidden)
- Acceptance/non acceptance should be formal/written.
- Once accepted, contractor is usually entitled to payment.
- Implied acceptance
 - Using it.
 - Not acting quickly enough.

Documentation

- All correspondence
- Summaries of meetings or phone conversations (contractor, end users, etc.)
- Internal correspondence
- Reports submitted
- Anything that changes the contract- Amendments, extensions, referenced materials, etc.
- Contract administration worksheet

Payment

- Effective contract administration requires payment procedures must be clear in the contract.
 - conditions
 - when
 - how
- Accuracy of invoice

Amendments

- Must be within the scope of the solicitation and offer/proposal.
- Must be in writing and signed by both parties.
- Must be timely. Cannot be issued after an contract expires.

Determining Acceptable Contract Amendments

- If within original contract scope
 - Function has not changed
 - Basic purpose of contract has not changed
 - Change in dollar amount is proportional to original contract
 - Competition of original solicitation
 - Would original offerors/proposers consider this within the scope?
 - Would potential offerors/applicants have responded to the solicitation if they knew the contract might change to this?

Problems

- Late delivery
- Poor quality
- Wrong product or service
- Target population not served
- Others?

Signs That all is not Well

- Contractor does not demonstrate understanding of contract requirements
- Late delivery/ milestones not met
- Failure to respond
- Complaints
 - From Users
 - Subcontractors -not paid in a timely manner

What Makes Contracts Go South

- Miscommunication/Lack of communication
- Lack of monitoring and follow-up
- Poorly defined specifications /scope
- Weak contract documents (reporting)
- Unforeseen conditions
- Poor planning or design
- Lack of knowledge of laws/regulations

Fixing the Problem(s)

- Do not procrastinate! It will not go away...
 - It will get bigger and worse over time
- Resolve at the lowest level possible
 - Dealing with it quickly may mean a quick resolution. Onsite meeting with program manager?
- Ask for help (other members of the team)
- Be objective
- Listen!

Schedule a Meeting

- As close as possible to the time that the poor performance has started.
- Do not create an atmosphere of hostility during your meeting. You are there to collaborate so all benefit.
- Prior to the meeting, let the vendor know you will be asking why the poor performance occurred.

Don't Allow the Meeting to End Without:

- Agreeing on an action plan to resolve the performance problem;
- The timeline in which the problem will be solved; and
- A mutually agreed way of measuring how effective the resolution is.

Choices for Action When Things go Wrong

1. Do Nothing
2. Do Something

- **Do Nothing**
 - Contract is almost at the end and it will not be procured again
 - Unusual or extenuating circumstances and there is a reasonable expectation it will self-correct.

Do Something

- Know your contract
 - Conditions when work may be rejected, procedures for doing so.
- Written notice of default
 - Notice to correct/cure (include timeframe)
- Liquidated Damages/ Warranties
- Contract Amendment
- Last resort - Termination

Termination

3 types

- **Convenience**
 - Written notice to terminate and stop work immediately
 - Agency obligated to compensate for any work completed up to notification of termination
- **Mutual Agreement -**
 - right to terminate with mutual consent of both parties
 - Written notice to terminate
 - Agency obligated to compensate for any work completed up to notification of termination

Termination

(continued)

- **Cause**
 - Right to terminate for default by contractor
 - Very serious – don't take the decision lightly
 - Cannot terminate arbitrarily –must be preceded by certain conditions and procedures (including notice to cure)
 - Contractor may be entitled to a prorated percentage of the negotiated fee if you accept any portion of the work.

Closing a Contract

- Best practice
 - In writing
- Exit interview with contractors and agency users
 - What worked/what didn't
 - Specifications/scope
 - Method of payment
 - Reporting
 - Timing
- Incorporate into planning for future contract

Questions? Contact us.

<http://hawaii.gov/spo>

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