

Contract Management and Administration

An Overview

Who is This Training Designed For?

Anyone charged with the responsibility for
managing or administering a contract

Today's Agenda

Why is contract administration & management important?

Definitions

Roles & Responsibilities

What Needs to be Managed

Planning

The Process for Contract Management & Administration

Contract Modifications

Closeout

What is Contract Management/Administration?

- Differing meanings – varies from entity to entity (Federal, state, municipal, etc.,)

Everything from:

- Planning for the solicitation until close of the contract (“cradle to grave”)
- Contract award to closeout/termination
- Contract execution until closeout/termination
- “Includes all relationships between government and the contractor.” (Cibinic & Nash 1995)

Contract Management/Administration GSA Definition

- "...Government actions taken after the award to obtain compliance with such contract requirements as timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions include technical, financial, audit, legal, administrative and managerial services...
- ...may include additional tasks requested or needed by the contracting activity including support in the **pre-award phase** of contracting."

Contract Management & Administration Hawaii Administrative Rules

- HRS does not specifically define Contract Administration or Contract Management. HAR defines **contract administrator**.
- The person designated to manage the various facets of contracts to ensure:
 - The contractor's total performance and delivery is in accordance with the contractual commitments, and
 - Obligations to the purchasing agency are fulfilled. (HAR 3-122-1)

Contract Management Golden Rule 1

All contracts must be managed.

- 'Let and Forget' does not work-
- Not managing a contract > mangling a contract
- Times have changed
- We buy more services than commodities (stuff).
- Even when we buy commodities we often buy services with them.
- Larger, more valuable contracts- require more oversight.

Roles and Responsibilities

- It takes a team
- Inherently Governmental Functions

Who - Roles & Responsibilities HRS/HAR

Chief procurement officer =

"...the chief procurement officer for state entities and the several counties as provided in section 103D-203, HRS, or the officer's designee." (HRS 103D-104)

Procurement officer =

"...any person with delegated authority to enter into and administer contracts and make written determination with respect thereto. The term includes an authorized representative acting within the limits of authority.

"The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer." (HRS 103D-104)

Who... (continued)

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 3-122-1)

Other Roles... (continued)

- **Program Manager** – responsible for the program for which the contract provides goods, services or construction
- **User/End User** – individuals or groups who will ultimately be using or may be benefitting from the contract
- **Subject Matter Expert(s) (SME)** – individual/individuals who have expertise in the technical aspects of the goods, services or construction
- **Stakeholders** - Individuals/Groups with a vested interest in the success of the contract. (a committee, heads of departments, etc.)

Other Roles... (continued)

- **Solicitation coordinator** – Individual responsible for issuing/coordinating the solicitation under the authority of the procurement officer.
- **Monitoring team/staff** - Individuals or groups who conduct technical or programmatic monitoring.
- **Contract Manager** – Usually handles the higher level responsibilities, is often the Procurement Officer.
- **Note:** One person may have more than one role.

Getting Outside Help

For large, complex contracts there are times when it may be useful and helpful to **contract** for expertise to assist in contract management.

- Advantages – expertise, another set of eyes
- Disadvantages & Risks - another contract to manage, vendor relationships to oversee
- Since it is the government's responsibility to manage the contract and expend funds, there are certain functions that cannot not be given/delegated to a contractor. Those functions are **inherently governmental** and are referred to as **Inherently Governmental Functions**.

What are Inherently Governmental Functions

(Reference: Procurement Circular 2014-14)

- Determining **what** to buy
- **Approving** solicitation documents including:
 - Requirements, specifications, scope of work
 - Incentives
 - Evaluation criteria
- **Negotiating** cost and price
- **Awarding** a contract

Inherently Governmental Functions (continued)

- **Approving changes** to an awarded contract including, but not limited to:
 - Ordering changes in scope, schedule, budget;
 - Taking actions based on contractor performance;
 - Accepting/rejecting contract goods or services
- **Terminating** a contract

What Must be Managed

- Contractor Performance
- Administrative Requirements (licenses, compliance, etc.)
- Fiscal (payment and burn rate log, etc.)
- Risks
- Relationships and Communication (contractor, stakeholders, end users)
- Contract document
- Modifications & Extensions
- Disputes
- Recordkeeping and documentation
- Closeout or Termination

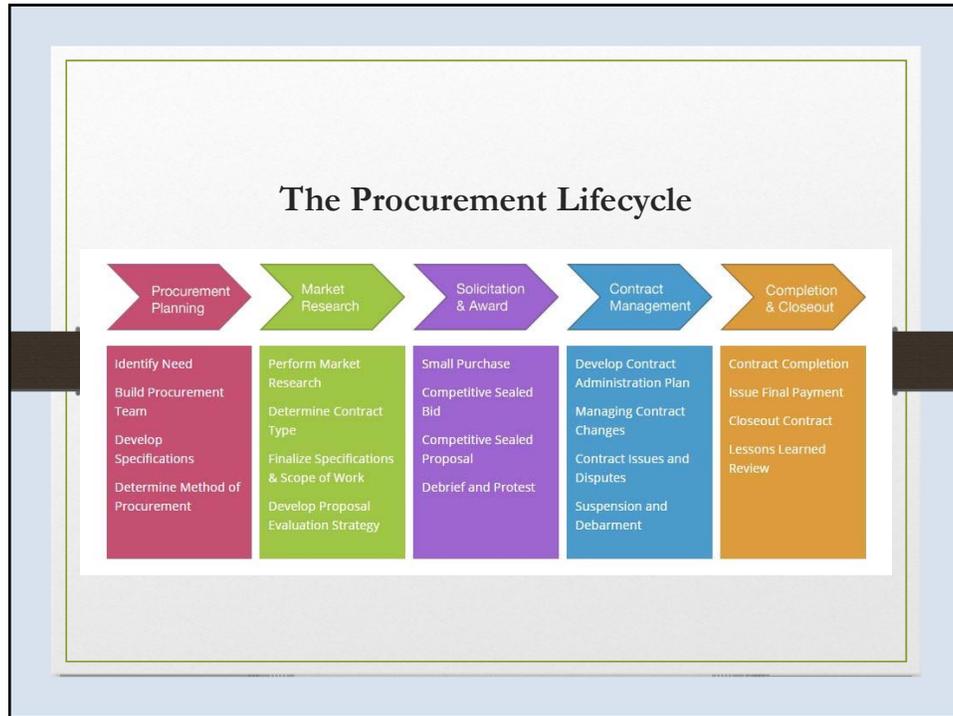
Contract Management Golden Rule 2

Planning is essential to good contract management.

- Plan for success! Flying by the seat of your pants does not work for managing contracts.
- Contract managers/administrators must be part of planning **from the beginning of the procurement process.**

Planning

- Importance of Being involved in Planning for the Entire Procurement Cycle
- Planning for Contract Management & Administration



Why Contract Administrators Need to be Involved from the Beginning

- Perspective from the point of view of implementing & managing a contract.
- Other members of the team have their jobs and will be looking at the procurement from the perspective of their job.
- Decisions that affect how a contract will be managed must be made when planning for the solicitation and must be included in the solicitation:
 - Method of procurement
 - Specifications/scope of service, requirement for quality control plan
 - Evaluation criteria
 - Administrative requirements

Planning: Contract Administrators Need to be Involved from the Beginning

If the procurement method selected is Competitive Sealed Proposals, the contract administrator must be on the evaluation committee.

(Reference: HAR 3-122-45.01 Evaluation Committee)

“(3) The contract administrator shall serve as a member of the committee;

(4) The contract administrator or a designee shall serve as chairperson, and the procurement officer or a designee shall serve as advisor...”

Planning: What Needs to be in the Procurement Plan/Solicitation

- Method of Procurement and Type of Contract
- Contractual terms and general and special conditions
- Contract term and conditions for extension (if any)
- How contractor performance will be evaluated
- Summary of performance requirements
- Requirement the vendor submit a 'quality control plan' as part of the proposal
- Method of payment/payment schedule, conditions for payment
- Subcontracting and subcontractor flowdown
- If the procurement method selected is Competitive Sealed Proposals, the contract administrator must be on the evaluation committee

Planning for Contract Management (continued)

One size Does Not Fit All:

- Varies from contract to contract
 - Factors
 - Nature and complexity of the procurement
 - Type of contract
 - Personnel experience and commitment
- Good contract management & administration assures that the end product or services are done satisfactorily.

Critical Factors in Procurement Planning for Contract Management/Administration

- Clear specifications/scope of work.
 - Must be able to determine if the contractor has met contract and obligations.
- Procurement method is appropriate to what is being procured and the bases for award.
 - Note: If procurement method is Competitive Sealed Proposals, the contract administrator must be on the evaluation team.
- Evaluation criteria must be appropriate.
 - If evaluation criteria do not measure the ability of the contractor to deliver goods/services, contract may not be able to be managed.
- ***Contract payments are linked to satisfactory contract performance.***

Critical Factors in Procurement Planning

(continued)

- Risks are identified and there is a plan.
- Contract administrator must have an understanding of what is needed by the end user and ensure the solicitation and resulting contract reflect that.
- Does one contractor have to work with another? How will that be managed?
- Contract Administrator will have to mediate end user and contractor disagreements by referring to the contract.

Planning: Contract Manager/Administrator Checklist for Solicitation Planning

- Specifications/scope of work (SOW) is clear.
- Summary of performance requirements is clear.
- Evaluation criteria measure what is being asked for.
- Procurement method is appropriate.
- Payment is linked to performance.
- Subcontracting and flowdown requirements are defined.
- Performance evaluation is defined.
- Submission as part of proposal of quality control plan - based on SOW and summary of performance requirements.
- Risks are identified and planned for.
- Terms and Conditions (T&C's), general and special conditions, are included in the solicitation.

Creating the Plan for Contract Management/Administration

- Contract management plans will vary based on the complexity of the contract.
 - Communication
 - Deliverables/Milestones/Performance Measures
 - Quality Assurance
 - Vendor Relationship
 - Risk
 - Health & Safety
 - Transition
 - Potential conflicts of interest, ethics issues, confidentiality, Operational Conflict of Interest (OCI)

Planning for Contract Management & Administration

The Contract Management Plan: Simple Contract Plan

- Contractor Info –
 - Contractor Name, address, representative, positions, phone, email, vendor code, Tax ID's if needed
- Government Info –
 - Contract Administrator/Manager, Procurement Officer; Program Manager, - Subject Matter Expert(s) (as applicable)-names, position & contact info
- Contract -
 - Solicitation info-Procurement Method, award date, solicitation title & number,
 - Documents attached by reference, Start & end dates, extension options,

The Contract Management Plan: Simple Contract Plan (continued)

- Payment – schedule, (how often, completion of deliverables, milestones, monthly, etc.); Total contract amount, Payment Arrangements, Who confirms invoices are correct, who authorizes payment; Incentive or penalty payments, burn rate log -
- Milestones –key dates, Performance measures, Deliverables; -
- Reporting requirements (format, frequency, what information, how transmitted)
- Administrative requirements – (compliance, licenses, etc.)- Special conditions/provisions

The Contract Management Plan: Simple Contract Plan (continued)

- Vendor Management
- Communication (including regular meetings)
- Risk Assessment & Review
- Quality Assurance (unannounced site visits)
- Administrative Requirements
- Contract review – how will lessons learned be identified and communicated?

Complex Contract Management Plan

- **Contract structure –**
 - Summary and background, documentation, term and extension options, Pricing
- **Roles and Responsibilities-**Identified roles & descriptions, stakeholder management
- **Contract Conditions-**General, Special, contract variations, Insurance
- **Financial-** Payment, incentives/rebates, penalties/disincentives, invoicing
- **Performance Measurement-**Performance measures, incentives/disincentives, monitoring

Complex Contract Management Plan (continued)

- **Administration-**
 - Contractor Obligations, State obligations, product or service standards, compliance management, transition, reporting, audit, meetings
- **Risk Assessment & Management Strategy-**
 - Procurement Risk Plan, contract risk plan, issue log, contract review, dispute resolution procedures, termination
- **Attachments**
 - Compliance management, risk management, transition plans, service level agreements, user survey questionnaires

Communication

- Who needs to be communicated with-
 - Contractor
 - Procurement Officer
 - Program Manager
 - Subject Matter Expert (SME)
 - End Users
 - Fiscal Staff
 - Stakeholders
 - Community, other contractors, etc..
- About
 - Progress,
 - Changes,
 - Problems,
 - Performance, etc.

Communication (continued)

- How often
 - Time interval (monthly),
 - Upon deliverable due date/ milestone,
 - Complaints, survey responses, etc.
- What format
 - email
 - **Meetings**
 - Letter
 - Newsletter
 - Surveys, etc.

Vendor Relationship

Also known as vendor management

- Contacts and roles
- Communication
- Reports
- Meetings & Site visits
- Expectations of milestones, deliverables, etc.
- Review of elevating disputes plan (what to do when the disagreements occur)
- Does contractor have to work with another contractor? How? Who will oversee?

Risk Assessment

- List the risks
- For each risk enter:
 - Description
 - The plan to mitigate each risk;
 - The action plan on what will be done if the risk is realized;
 - Who is assigned to monitor and how often; and
 - Who will act if action is required.
- Include how often the risk assessment will be reviewed and by whom
 - New risks may arise, old ones may decrease, methodology for mitigating or actions may change.
- Assumptions are low level risks.

Quality Assurance

Ensuring the quality of the goods, services or construction as dictated by the contract is maintained.

- Built from the quality control plan submitted by contractor
- Quality assurance activity - in-house, by external parties or by a combination of both approaches?
- Analysis of performance data.

Quality Assurance (continued)

- Planning may be started at solicitation phase. Will be further developed after reviewing quality control plan submitted by awardee.
- Plan reviewed periodically.
- Dictates of the plan reported on regularly.
- **Random Site Visits**

Transition What if...

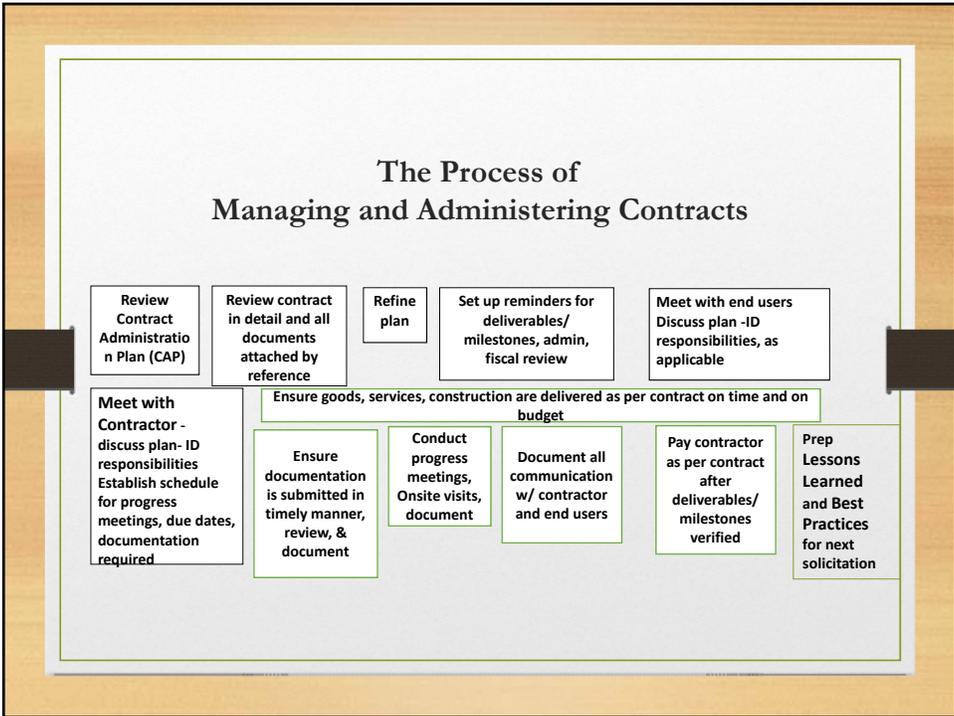
- Plan for transition to new contractor at contract end (should another vendor be awarded) or termination.
- Disposition of records, equipment, how transition of services will be carried out, etc.
- For IT- codes, logins/passwords, intellectual property rights, data on platforms, apps, ownership of data collected, etc.

Other Parts of the Contract Management Plan (Ethics, Conflict of Interest, Confidentiality)

- **Principles**
 - Fairness and Impartiality
 - Consistency and Transparency of Process
 - Security and Confidentiality
 - Identification and Resolution of Conflicts of Interest
- **Protecting confidential information**
 - Protocols to ensure that confidential and/or commercially sensitive information:
 - is protected;
 - is only available to those who need it.

Other Parts of the Contract Management Plan (continued)

- **Conflict of Interest Declarations and Confidentiality Agreements**
 - Ensure that everyone involved signs NDA documents, as appropriate.
 - Set up policies to deal with conflicts of interest at the outset.
 - Manage identified conflicts of interest.
 - OCI – Operational Conflict of Interest mitigation plan



Golden Rule Number 3 – Know your contract

- Review contract in detail and all documents attached physically or by reference
- Know order of precedence
- Know conditions under which modifications may occur
- Fiscal requirements and conditions for payment

Fiscal Management - Burn Rate Log

	A	B	C	D	E	F	G	H	I
1	Contract Nbr.:		XXXX						
2	Contract Title:		XXXXX						
3	Contract start:		7/1/2016						
4	Contract end:		6/30/2017						
5	Total Contracted Funds		\$200,000.00						
6									
7	date rec'd	amount of invoice	date paid	period anticipated	difference for period	total expend-anticipated	total expend-actual	difference	Funds Remaining
8									\$200,000.00
9	9/1/16	\$65,000.00	9/25/16	\$50,000.00	(\$15,000.00)	\$50,000.00	\$65,000.00	(\$15,000.00)	\$135,000.00
10	12/31/16	\$62,000.00	1/17/17	\$75,000.00	\$13,000.00	\$125,000.00	\$127,000.00	(\$2,000.00)	\$73,000.00
11	3/30/17	\$21,000.00	4/15/17	\$25,000.00	\$4,000.00	\$150,000.00	\$148,000.00	\$2,000.00	\$52,000.00
12	6/30/17			\$50,000.00		\$200,000.00			
13									
14									
15									
16									
17	total			\$200,000.00					
18									

Contract Modifications

- **Must have change clause in your contract.**
- **Two types of Changes**
 - **Unilateral – Change Order (not used very often for goods & services)**
 - Vendor is entitle to just compensation and may make a claim
 - **Bilateral – Contract Modification**

Contract Modifications HAR Section 3-125-3

- Must be **written**;
- Must be **within scope of the contract**;
- May amend specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions (see other requirements in HAR Chapter 3-125)
- **Mutual** - parties to the contract agree.

Contract Modifications
Guiding Principles for all of Procurement

- **Must be fair to all (consider the procurement)**
- **Must be transparent (cannot hide it)**
- **Must be documented**
 - Include justification
 - Signed by Procurement Officer

Contract Management Golden Rule 4

DOCUMENT, DOCUMENT, DOCUMENT!!!!



Contract Modifications

Changes to Quantity in Definite Quantity Contracts HAR Section 3-125-8

- Must have statement pursuant to HAR section 3-125-8 **in the contract.**
- Increase maximum is **10%**
- **Unit prices remain the same** except for any price adjustments otherwise applicable (contract must have price adjustment clause).
- Procurement officer makes a **written determination** that the increase will either be more economical than awarding another contract or that it would not be practical to award another contract.
 - Include justification

Contract Modifications

Price Adjustments HAR Section 3-125-12

- Must have statement pursuant to HAR section 3-125-12 **in the contract.**
- Contractor must provide cost or pricing data and certify it is accurate and complete to best of knowledge by agreed-upon date. (HRS 103D-312)
- Must be computed using one or more of the following methods:
 - Agreement on fixed price prior to performance
 - Unit prices specified in contract or agreed upon prior to performance
 - Costs attributable to the events/situations as specified in the contract or or agreed upon prior to performance
 - Other manner as mutually agreed upon prior to performance

Contract Closeout

- Make sure you have a procedure for closing a contract. Don't just let it fade away.
 - Funds may remain tied up to your contract.
- If there are federal funds, know the requirements.
 - May need to provide reports, conduct an audit, etc.
- Conduct an exit interview with the contractor.
- Compile your **lessons learned and best practices** for the next contract.

Contract Administration & Management

- Monitor and track contracts and vendors/providers
 - Requirements are delivered
 - Terms and conditions met
 - Invoices correct
 - Timely vendor/provider payments

- **Helpful hints**
 - Be familiar with the details of the contract
 - Understand the tasks, performance & deliverables required
 - Be familiar with the performance time frames
 - Have a plan to manage requirements
 - Prioritize documents by importance

Don'ts of Contract Management and Administration

(continued)



- The contractor/provider cannot start work prior to contract execution
- The scope of services cannot be changed without going through a formal contract amendment process
- Contractor/provider cannot perform work that is not within the contract scope of services and contract funding
- The term of the contract cannot be extended without going through a formal contract amendment process
- The contractor/provider cannot incur additional costs beyond the amount set by the contract
- Do not sign contractor/provider forms without proper authorization

Don'ts of Contract Management and Administration (continued)

- Invoices should not be approved without verifying that the products/services have been received and at the contracted price.
- Do not rely solely on verbal communications; electronic transmissions should be liberally used.
- Do not postpone administrative action and documentation because vendor promises to comply.

Contract Management & Administration (continued)



- Problem Areas
 - Too much time in the front and back end of contracts --- awarding/executing and closeouts
 - Team members are unclear what are their roles and responsibilities
 - Contract oversight done by improper or under-trained team members
 - Lack of State oversight of contractor/provider work performance
 - Untimely payments and contract closeout due to inadequate payment processing

In Summary:

- Plan in a timely manner –
 - Solicitation and contract must contain everything needed to ensure good management
 - Ensure the right personnel are on the team
- Develop a Contract Management Plan
 - Communication
 - Vendor Relationship
 - Quality Assurance
 - Risk Management
 - Fiscal Management



Checklist for Good Contract Management & Administration

- Communicate
 - Contractor, Users, Stakeholders, Team, Community (as appropriate)
- Organize and document
 - Files organized in a consistent manner.
 - All communication documented and kept in the file.
 - Payment log
 - Deliverables/milestones and due dates
 - Administrative requirements and due dates
- Meet with contractor on regular basis,
- Conduct unannounced site visits



Golden Rules for Contract Management and Administration

1. Contracts must be **managed!**
 - 'Let and forget' does not work.
2. Contract management needs to be **planned**. Participate in planning from the beginning of the procurement process
3. **Know your contract**
 - including but not limited to: general & special conditions, scope, deliverables, milestones, performance measures, important dates and attached documents!
4. **Document**, document, document!