

- Contracts Training - How to get your POS contract right the first time



Lara Mainella & Mary Richards

9 am - 12 pm. January 21, 2021

THIS MEETING IS BEING RECORDED 😊

NOTICE: This session will be recorded. The recording will become a public record subject to disclosure. By attending the meeting you consent to being recorded and consent to the recording being released to public records requestor(s) who may see you, your home, your family or other occupants in the recording. You have the option to turn off your video camera and participate with audio only.



I WAS TOLD

**I WOULD NOT HAVE TO DO THE
TRAINING**

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TRAINING

emegenerator.net

Today's Schedule - 9 am. to 12 pm.

- ▶ Welcome/Intro
- ▶ Things to Look for today
- ▶ People involved in a contract and their roles
- ▶ The Life of a Contract
- ▶ BREAK
- ▶ Walk through a POS
- ▶ How to write a Statement of Work / Scope of Services
- ▶ Review Handouts
 - ▶ Top 10 Tips
 - ▶ Mythbusters
- ▶ Closing and Evaluations

Zoom Etiquette & Recording Notice

- ▶ THIS SESSION IS BEING RECORDED.
- ▶ THERE ARE ALMOST 150 PEOPLE - WOW!
- ▶ PLEASE **MUTE** YOUR MICROPHONE
- ▶ VIDEO IS OPTIONAL
- ▶ **TURN OFF VPN** IF POSSIBLE
- ▶ **RAISE YOUR HAND TO ASK A QUESTION** and type it in the chat
- ▶ Take breaks as needed. We'll have one official break halfway through.



Things to look for:

Expectation Reminders We would like to set some “expectations” around contract preparation and roles. This training will help equip you to fulfill your role in that process. If we all have the same understanding of these expectations, the contract process will be smoother and faster.

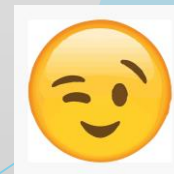
MYTH BUSTERS - bustin’ some myths about contract drafting, City procedures, lawyers in general, and making your life easier.

“TERMINOLOGY CHECK” I WILL TRY TO CUT BACK ON THE JARGON
YOUR HANDOUTS INCLUDE A LOVELY GLOSSARY OF THAT JARGON...

IN THE HANDOUTS - Look for a link in the PPT or an email

More things to look for:

- ▶ **Top 10 Tips:** this handout gives the top 10 tips for getting your POS contract “right” the first time.
- ▶ *READ FOR LATER:* some slides are pretty dense and meant to read later. I will note these as we go along.
- ▶ **“Interactive Moments”:** look for polls, quizzes and opportunities to use the Chat - to keep you awake



Welcome and Intro

What is your role when it comes to building a good contract?

Introductions

Participant Poll - how long have you worked here,
and what percentage of your job deals with contracts?

Who might be involved in putting together a contract for the City?

- ▶ Agency staff
 - ▶ Subject matter experts (SME)
 - ▶ Administrative staff / Legistar and Munis experts
 - ▶ Finance / Budget Person
- ▶ Purchasing Staff
- ▶ City Attorney
- ▶ Risk Management
- ▶ DCR / Contract Compliance Specialists
- ▶ The Contractor

QUIZ: Who has primary responsibility for preparing a City Contract? (Poll)

- A: The Agency that will be using the contract
- B: Finance Department
- C: City Attorney
- D: Contractor
- E: All of the Above

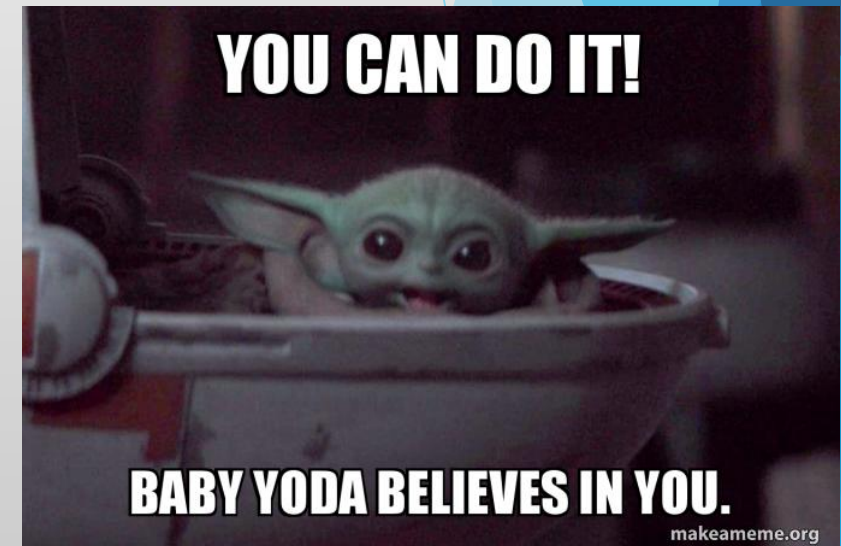
Expectation Reminder

A: The Agency that will be using the Contract has primary responsibility



The most important person is You!

- ▶ Whether you're the SME or the administrative or budget person who will track the contract, you - the agency staff - hold the keys to designing a good contract.
- ▶ Today's session will give you the confidence and the tools to make it happen!



SUBJECT MATTER EXPERT (SME)

- ▶ The person in your agency who knows the most about the subject matter of the contract.
 - ▶ **“Interactive Moment”**: Type in the Chat - think of a recent contract in your department - What was the subject matter, and Who was the SME?
 - ▶ Now, think about what other agency staff were involved, and what were their roles? What worked well?
 - ▶ **Zoom POLL**: about SMEs

What can and should the SME do?

- ▶ Work with Purchasing to design RFP & select contractor
- ▶ Write the authorizing resolution (or work with agency staff)
- ▶ Fill out the blanks in POS contract, handle communications w/ contractor
- ▶ Work with contractor to write the description of services (aka Scope of Services or Statement of Work)
- ▶ Negotiate **payment schedule & other payment details**
- ▶ Flag important requirements for the work, predict problems, add stuff to the contract to deal with that.

Agency Admin / Budget / Agency Finance staff

These folx know the ins and outs of City process and how to ***get things done***:

- ▶ Legistar
- ▶ Council & Committee schedules and procedures
- ▶ MUNIS
- ▶ Contract Routing Database (k's signed by mayor/clerk)
- ▶ For contracts that require a council resolution, all of the above skills are needed.
- ▶ SMEs and Admin Staff should work together - ***early***- to make a plan for these tasks and who will do them.

Other Roles: Purchasing, Legal, DCR, Risk Management, IT

IN THE HANDOUTS

- ▶ See “ROLES OF PEOPLE IN THE LIFE OF A CONTRACT”
- ▶ See Glossary
 - ▶ “Legal decisions”
 - ▶ “Business decisions”
- ▶ There are much better people to help you than me 😊
- ▶ In the OCA - work is assigned by department, and subject matter.
- ▶ If you think you have a legal issue with your contract, go to the ACA assigned to your agency first.
- ▶ If contracting for software - go to IT first. See APM 3-20 and New Software Request Form. The contract will come back to me when the time comes

Questions about
staff roles in preparing a
contract?

The Life of a Contract

Steps from start to finish

Today's focus is on Contracts for Purchase of Services (aka POS contracts)

- ▶ “Services” refers to anything that’s not goods and not public construction
- ▶ **POLL:** Which of these are services?
 - ▶ Architectural design for a new library
 - ▶ Internet security audit
 - ▶ Buying trees
 - ▶ Buying Masks and other PPE
 - ▶ Repaving streets and sidewalks
 - ▶ Designing a resident survey
 - ▶ Mailing tax bills
 - ▶ Cleaning water towers
 - ▶ Installing a shed at the base of a radio tower

▶ Why does it matter if your contract is for services, goods or construction? (to read later)

1. **Different competitive selection rules** depending on whether your contract is for goods, services, or public works (public construction over \$25k)
 - A. See the Purchasing Guidelines
 - B. City Engineering administers the statutory bidding process for Public Works
2. **Different Contract Forms** for each:
 - A. Service contracts over \$10k are made on a POS (under \$10k, use a PO)
 - B. Goods can be purchased with just a Purchase Order (PO.)
 - C. Public Works contracts are made on a special form approved by the Board of Public Works which includes “Standard Specifications,” bond requirements, and more.
3. **Different Insurance requirements for each**

What if you're making a small purchase?

- ▶ Services under \$10,000 do not require a contract at all - you can purchase services under this amount without ANY signed contract.
- ▶ The PO provides necessary City legal terms for goods & small dollar services
- ▶ What if the contractor gives you a contract to sign?

WE NEVER SIGN A CONTRACTOR'S CONTRACT!!

If under \$10k, tell contractor we don't need a contract... You can use a quote and PO

Except - NOT a quote that includes "hidden terms and conditions" (more on that later.)

Steps in the life of a service contract...

- ▶ Selection
- ▶ **Authorization**
- ▶ **Contract Drafting**
- ▶ Signatures
- ▶ Implementation/Monitoring
- ▶ Post -contract stuff:
 - ▶ Amendments
 - ▶ Extension / Renewal
 - ▶ Termination/Expiration

“The Lifecycle of a Contract” Checklist

- ▶ IN THE HANDOUTS will be a checklist for each step during the lifecycle of your contract.
- ▶ THIS TRAINING will focus on the **authorization** and **contract drafting** steps.
- ▶ SEE links in this PPT and handouts for details about the other steps

Selection Process refresher - Mary Richards

- ▶ How do you **select** the vendor/contractor? See the [Purchasing Guidelines](#)
 - ▶ Competitive Selection:
 - ▶ Informal quotes, RFP, RFQ, RFB
 - ▶ “Piggybacking”
 - ▶ Purchasing consortiums / cooperative purchasing
 - ▶ Non-competitive Selection: See [Procurement Process Overview](#)
 - ▶ “True Sole Source”
 - ▶ Past consultant / efficiency
 - ▶ “I just want to use this contractor”
 - ▶ Special cases: Universities, lawyers

Authorization... to *contract*, and to *sign*.

- ▶ Common Council authorization is required for all contractual relationships entered into by the City.
- ▶ CDA and PHMDC have similar rules from their governing bodies.
- ▶ The Council authorizes City contracts in a few ways:
 - ▶ An ordinance such as MGO 4.26
 - ▶ A resolution
 - ▶ The budget (rare)
- ▶ WHO is authorized to sign this contract? **POLL**
- ▶ THIS SHOULD BE THE FIRST QUESTION YOU ASK.
- ▶ DO NOT WRITE ONE WORD OF YOUR CONTRACT BEFORE KNOWING WHO WILL SIGN IT.

HOW DO I KNOW WHO IS AUTHORIZED TO SIGN?

- ▶ CLUES: *NOT YOU. NOT YOUR DEPARTMENT HEAD. NOT EVEN IF YOUR DEPARTMENT HEAD BEARS THE TITLE “Chief” or “Mayor”*
☺ *Not the City Attorney either.*
- ▶ For goods and services, the choices will be Purchasing, or the Mayor and City Clerk
- ▶ MGO 4.26 AUTHORIZES PURCHASING TO SIGN PURCHASES UP TO A CERTAIN \$\$ and DURATION.
- ▶ MARY RICHARDS IS THE PROCUREMENT SUPERVISOR AND SIGNS.
- ▶ CONTRACTS THAT EXCEED MARY’S AUTHORITY MUST BE AUTHORIZED BY A RESOLUTION, TYPICALLY THE MAYOR AND CLERK ARE NAMED TO SIGN FOR THE CITY.

OK, SO HOW DO I FIGURE OUT WHO IS AUTHORIZED TO SIGN THIS CONTRACT??!!!

▶ MGO 4.26:

https://library.municode.com/wi/madison/codes/code_of_ordinances?nodeId=COORMAWIVOICH1--10_CH4FI_4.26CIPU

▶ ‘QUICK CHART’

<https://www.cityofmadison.com/attorney/documents/ContractsQuickChart.pdf>

▶ CHEAT SHEET: See the fine print under Mary Richard’s signature line on the standard POS contract forms (next slide)

...the fine print at end of POS contract:

NOTE: Certain service contracts may be executed by the designee of the Finance Director on behalf of the City of Madison:

By: _____

Mary Richards, Procurement Supervisor

Date: _____

MGO 4.26(3) and (5) authorize the Finance Director or designee to sign purchase of service contracts when all of the following apply:

- (a) The funds are included in the approved City budget.
- (b) An RFP or competitive process was used, or the Contract is exempt from competitive bidding under 4.26(4)(a).
- (c) The City Attorney has approved the form of the Contract.
- (d) The Contract complies with other laws, resolutions and ordinances.
- (e) The Contract is for a period of 1 year or less, OR not more than 5 years AND the average cost is not more than \$100,000 per year, AND was subject to competitive bidding. (If over \$50,000 and exempt from bidding under 4.26(4)(a), regardless of duration of the Contract, the Common Council must authorize the Contract by resolution and the Mayor and City Clerk must sign, per 4.26(5)(b).)

Emergency Service contracts may also be signed by the designee of the Finance Director if the requirements of MGO 4.26(3)(c) are met.

So, what can Purchasing sign?

- ▶ If competitively selected:
 - ▶ Contracts for goods at any price
 - ▶ Service Contract for 1 year or less, at any price
 - ▶ services up to 5 years and not more than \$100,000/year average
- ▶ If not competitively selected:
 - ▶ maximum of \$50,000 total
 - ▶ Or maximum of \$50,000 annually for recurring annual software or technology services

You need a resolution - *now what???*

- 1ST FIGURE OUT THE TIMING. LOOK AT COUNCIL CALENDAR.
IN THE HANDOUTS - THE [BPW CALENDAR](#) IS YOUR BEST FRIEND
- 2ND GET A SPONSOR - tell them what it's for, the basics
- 3RD WRITE THE RESOLUTION
- 4TH WORK WITH YOUR LEGISTAR EXPERT TO GET THE RESOLUTION ENTERED INTO LEGISTAR ON TIME. LEARN THE COUNCIL DEADLINES.
- 5TH GIVE YOUR BUDGET ANALYST A COURTESY HEADS UP

MYTH BUSTER - YOU DO NOT HAVE TO HAVE YOUR CONTRACT DONE BEFORE INTRODUCING THE RESOLUTION

MYTH BUSTER - YOU REALLY SHOULD NOT ATTACH YOUR CONTRACT TO THE RESOLUTION IN LEGISTAR

Resolution tips: (to read later)

- ▶ When do you want the contract to start? Work backwards from that date.
- ▶ Resolutions must be introduced, referred, and come back to Council for adoption at a future meeting (can't be introduced & adopted on same day).
- ▶ Most contract resolutions are referred to the Finance Committee
- ▶ The Mayor is a good choice to sponsor a contract resolution, if there is no alder who is a logical choice for the subject matter
- ▶ Resolutions don't take effect until the Mayor signs the proceedings from that council meeting (usually the Friday after the Council meets.)

MYTH BUSTER - IF TIME IS SHORT, THE CONTRACTOR CAN SIGN THE CONTRACT BEFORE THE RESOLUTION IS ADOPTED.

Put the contractor-signed contract into routing after the resolution is adopted and proceedings are signed.

Resolution timing example: (to read later)

Ex: desired contract start date is July 1

- ▶ Resolution must be adopted by last council meeting in June.
- ▶ Resolutions do not **take effect** until the mayor signs the **proceedings** -usually the Friday after the council meeting where the resolution is adopted.
- ▶ Working backwards from the last Friday before July 1 (*if you like to live on the edge. If you don't, give yourself a couple Fridays...*)
 - ▶ Introduce resolution by the last meeting in May
 - ▶ Refer to Finance Committee
 - ▶ FC refers back to 1st or 2nd council meeting in June for adoption
 - ▶ Mayor signs proceedings.
 - ▶ THEN contract can be signed by the City.

Resolution DRAFTING:

- ▶ YOU can draft a resolution. Anyone can. Unlike ordinances, resolutions do not have to be drafted by the City Attorney. *Expectation Reminder: OCA does not typically draft contract resolutions.*
- ▶ Today - not covering how to write a resolution or the Legistar process.
- ▶ RESOURCES:
 - ▶ [APM 1-1](#) REQUIRED CONTENT: who, what, when, where and how much \$\$
 - ▶ FINANCE COMMITTEE WANTS TO KNOW IF COMPETITIVELY SELECTED OR NOT
 - ▶ USE THESE SAMPLE RESOLUTIONS: [Sample Resolution Memo](#)
 - ▶ Legislative Information Center:
<https://www.cityofmadison.com/employeenet/legistar/>

MYTH BUSTER - DO NOT ATTACH A COPY OF YOUR CONTRACT IN LEGISTAR

10 MINUTE BREAK

(before or after questions and poll)

Poll / Quiz

- ▶ Who can sign contracts?
- ▶ What agencies are authorized to contract?



Questions about Resolutions or Signature Authorization?

Drafting your Contract

About the POS - it's required for services of \$10,000 or more

- ▶ POS forms are designed to provide all the necessary legal terms for your contract
- ▶ POS forms are designed to be USER FRIENDLY
- ▶ POS contract is a shell, a vessel, to contain your contract information.
- ▶ The Important Information is in the ATTACHMENTS (*terminology check*)
- ▶ Today - I want to give you an understanding of the “why” behind these contract rules....
 - ▶ Why does it matter if you get the contractor's name right?
 - ▶ Why does it matter if the Scope of Services is thorough?
 - ▶ Does it really matter WHEN the city makes payments?
 - ▶ And why do we care if the contractor's legal terms are included? I'm sure they're fine....
- ▶ **ANSWER ANY OF THESE “WHY” QUESTIONS IN THE CHAT**

The “Big Picture” of contract drafting....

- ▶ All City contracts must include 2 things:
 - 1) legal clauses to protect the City - the lawyers are in charge of that part. The POS (or PO) provides everything you need. Don't change them. If the contractor wants to, “just say no.”
 - 2) Information to describe the work, the products, price, etc.
 - ▶ YOU are in charge of this part.

Why do we care?

About the City's mandatory legal terms?

- ▶ Protect the city from liability and lawsuits
- ▶ Provide insurance to cover losses
- ▶ Protect taxpayer investment/ good stewardship
- ▶ Further important social policies:
 - ▶ not discriminating against employees or persons with disabilities
 - ▶ employing a diverse workforce
 - ▶ Equitable hiring practices.

Why do we care about the contractor's t's and c's?

- ▶ On one hand - we need info from the contractor: quote, pricing, SOW, product description, software license terms. Stuff only they can provide. Some contractor docs will become the “Attachments” in Section 3.
- ▶ On the other hand - we don't want to agree to unfair or unfavorable legal terms hiding in contractor's forms.

**THE CONTRACT HAD A
FEW STRINGS ATTACHED**

**I PLAYED WITH THEM
FOR SEVERAL HOURS**



Examples of Hidden t's and c's:

- ▶ A link in the fine print at the bottom of a quote (almost all software / SaaS)
- ▶ At the end of a perfectly good Statement of Work (Itron)
- ▶ Lurking in warranty or maintenance plans
- ▶ Software you didn't know was included in your purchase

Examples of BAD legal terms (why we care):

- Conflicting provisions, especially the TERM (nonsensical contract)
- Indemnification of Contractor by the City (violates APM)
- Limitations of Liability (limits our ability to recover damages if wronged)
- choice of law (I don't want to go to Idaho)
- Confidentiality clauses (violates open records)
- mandatory arbitration (expensive)
- early termination penalties (stupid), automatic renewals (exceeds authority)

When do we *want* to use documents that came from the Contractor? (*to read later*)

WHAT WE WOULD APPRECIATE FROM THE CONTRACTOR:

- ▶ A good description of the services and/or products we are buying
- ▶ A project schedule that you participated in writing and agree with
- ▶ A list of deliverables / Scope of Services / Statement of Work
- ▶ License agreement that is necessary for licensing of software or other proprietary technology **BUT MUST BE REVIEWED AND NEGOTIATED BY CITY ATTORNEY**
- ▶ Privacy Policy and/or Data Use agreement when sensitive data is involved

WHAT WE DON'T WANT:

- ▶ Their legal “terms and conditions” for anything that’s not software
- ▶ Lists of their references and pictures of their staff
- ▶ Vaguely worded descriptions of what they are capable of doing or what their system is “designed to do.” We want to know what they **WILL** do for us.

This Quotation is subject to the warranties, disclaimers and all other terms and conditions set forth by TSI Inc. and incorporated by reference and to no others. Seller reserves the right to change prices effective on any new orders, provided Seller notifies in writing those with currently valid Quotations prior to any order being placed. This quotation shall become an agreement binding upon the Buyer and Seller when accepted by the Buyer and subsequently accepted by an authorized representative of the Seller at the Seller's home office and thereupon shall constitute the entire agreement between the parties.

Pamela Wittig
TSI Incorporated

Date 08/25/2020

*TSI Terms and Conditions apply and are incorporated by reference. See <http://www.tsi.com/tc.pdf>
For payment terms, complete credit application at <http://www.tsi.com/credit-app/>*

Putting together your POS contract

Finally!



[Coronavirus \(COVID-19\) Updates](#)

Get the latest Employee Updates, information on working from home, policies, and data related to COVID-19.

Contract Forms

[Standard City Signature Block.doc](#)

[Contract Request Form - Office of City Attorney.doc](#)

[Contract for Purchase of Services.doc](#)

[Contract for Purchase of Services \(Architect\).doc](#)

[Contract for Purchase of Services \(Design Professionals\).doc](#)

[Contract for Purchase of Services \(Police\).doc](#)

[Contract for Purchase of Services \(Public Health Madison & Dane County\).doc](#)

[Contract for Purchase of Services \(Roadway Design Engineering\).doc](#)

[Contract for Purchase of Services \(UW\).doc](#)

[Renewal or Extension of the Contract for Purchase of Services.doc](#) - A contract "renewal" means you are exercising an option to renew the contract for a period of time, when renewal options were written into the original contract. A contract "extension" means you are simply extending or lengthening the contract period so it has a later end-date than the original contract.

[HIPAA Business Associate Agreement - for use by City Agencies.doc](#)

[HIPAA Business Associate Agreement - for use by PHMDC.doc](#)

[Room Rental Addendum.pdf](#) - To be used when an organization requires the City to sign an agreement or contract to rent or reserve a room. Attach this to the agreement and present to Purchasing for signature.

[HR Presenter Contract.doc](#)

[Network Connection Policy.doc](#)

[Public Works Contracts: Forms](#)

[Contract for Purchase of Services.doc](#)

[Contract for Purchase of Services \(Architect\).doc](#)

[Contract for Purchase of Services \(Design Professionals\).doc](#)

[Contract for Purchase of Services \(Police\).doc](#)

[Contract for Purchase of Services \(Public Health Madison & Dane County\).doc](#)

[Contract for Purchase of Services \(Roadway Design Engineering\).doc](#)

[Contract for Purchase of Services \(UW\).doc](#)

[Contract for Purchase of Services](#) *DOC*

[Contract for Purchase of Services \(Architect\)](#) *DOC*

[Contract for Purchase of Services \(Design Professionals\)](#) *DOC*

[Contract for Purchase of Services \(Police\)](#) *DOC*

[Contract for Purchase of Services \(Public Health Madison & Dane County\)](#) *DOC*

[Contract for Purchase of Services \(Roadway Design Engineering\)](#) *DOC*

[Contract for Purchase of Services \(UW\)](#) *DOC*

MythBuster:

The POS Instruction Page is not just for the Contractor.

If YOU read and follow these instructions, it will go a long way toward preparing a good POS that will sail through the signature process.



INSTRUCTIONS FOR CONTRACTOR

DO NOT ATTACH TO CONTRACT

Your contract *MUST* include the following information, or it will not be signed by the City.

- Check one box at top of Page 1 for the type of business entity.
- Sections 3 & 4 will be completed by the City and should be complete before you sign.
- Put a name in Sec. 7.A. – person responsible for administering the contract.
- Affirmative Action:** Check the appropriate box in Sec. 13.B., Article IV and complete the appropriate online form for the box you have checked:

All contractors:

Access the online forms for Affirmative Action compliance at this link: www.cityofmadison.com/civil-rights/contract-compliance/vendors-suppliers/forms. If you do not already have an approved, current Affirmative Action Plan on file with the City of Madison, read the "Instructions for Completing City of Madison Affirmative Action Plan" at the above link. This will direct you to register for an account. If you already have an account you may click on the link for "Affirmative Action Plan for Vendors and Suppliers" to proceed. If you have never filed a plan or request for exemption, you must create an account in our online system. If you are exempt under Article IV, Sections C or D you will still need to create an account and go through some steps to confirm your exemption. Register for an account here: <https://elam.cityofmadison.com/citizenaccess>.

Affirmative Action Questions? Contact Dept. of Civil Rights, Contract Compliance: (608) 266-4910.

- Complete Sec. 15 – Official Notices. This is the name/job title/address of the person at your organization to receive legal notices under the contract.
- Signature line. A person with authority to bind the organization should sign, date, and print name and job title where shown on the signature page. Contractor signs first, City signs last.

I'M JUST A SIMPLE CAVEMAN LAWYER

**THIS CONTRACT TALK FRIGHTENS
AND CONFUSES ME**

imgflip.com



Before we walk through a blank POS contract

REMEMBER....

- ▶ The POS is just the shell through which the LIFE of your contract flows.
- ▶ YOU will bring life to that document through the information you supply, by filling in the blanks and attaching documents through Section 3.
- ▶ We will learn about each of the blank fields in the POS, the purpose and reasoning behind them.
- ▶ We will also spend time talking about contract ATTACHMENTS
- ▶ Once you understand this, YOU will have the knowledge to prepare a really great POS contract

- ▶ Lara will now share her screen

*walk through a sample
POS contract together...*

When to involve the City Attorney?



IN THE HANDOUTS -

**ROLES OF PEOPLE IN THE LIFE
OF A CONTRACT**

AND

CHECKLIST (TBD)

Special situations - we might agree to change the POS and you can involve OCA:

- ▶ Past contracts with the same vendor - if you know that you have contracted with a vendor in the past, and worked with the City Attorney to make changes to the POS.
- ▶ Contracts spending federal, state or private grant funds
- ▶ Contracts for Services to be performed by another government agency:
 - ▶ Ex: UW-Madison - see custom POS form on Employeeenet

Contract disputes:

- ▶ Guess what? They rarely happen. At least the kind that result in an actual lawsuit or going to court.
- ▶ I'd like to think this is because of GOOD CONTRACT DRAFTING
- ▶ If there were a lawsuit.... We will be in a good position if we have a clear, understandable contract.



Writing a Scope of Services or Statement of Work

Practical Tips for writing a Scope of Services or Statement of Work (SOW)

- ▶ Always say “who” is doing “what.”
- ▶ Use numbered paragraphs or sections (not bullets)
- ▶ Define technical words & terms of art.
- ▶ Avoid jargon, skip the flowery descriptions.
- ▶ Choose names for everyone at the beginning and use the same name throughout.
- ▶ Include a schedule / milestones / deadlines.

Practical Tips - Scope / SOW

- ▶ Use direct, concise language.

- ▶ Avoid the passive voice!

BAD: “Reports will be prepared each month.”

Better: “The Contractor will prepare a report each month.”

Best: “Contractor will prepare and deliver a report to the City by the 5th of each month. The report shall include...X, Y, Z...”

What are milestones?

- ▶ “Milestone-based payment schedule”
- ▶ Milestones are stages within a service contract by which certain tasks must be completed
- ▶ Tying your PAYMENTS to completion and acceptance of these Milestones is a very good idea
- ▶ Call them milestones, phases, tasks, whatever you want.

Acceptance in a Scope of Services / SOW:

- ▶ What is Acceptance?
- ▶ The City's acceptance of "deliverables" during the contract
- ▶ The Scope / SOW should include a process for the City to accept the work performed, and
- ▶ Criteria to determine what is acceptable.
- ▶ Condition payment on the City's Acceptance

Scope drafting Options

- ❖ “Kitchen sink approach” = Attach or Incorporate RFP and contractor’s proposal/quote/price sheet, and anything else important. (see handouts for downsides)
- ❖ “Cut & Paste” = Attach only the relevant portions of RFP and contractor’s proposal.
 - ▶ RFP Section 2, if well written, can become your scope.
- ❖ “Perfectionist” = write it from scratch.
- ❖ “Scrapbook” = piece together materials from contractor, technical specs, product descriptions.
- ❖ “Lazy approach” = let the contractor write it. This isn’t a bad idea but you need to review it.

Wrapping up...

- ▶ I hope this gives you some ideas about why you need good contract ATTACHMENTS
- ▶ And how to begin writing (or evaluating) those attachments for Section 3 of POS.
- ▶ You should feel comfortable filling in all of the blanks in the POS and know what they are for.
- ▶ Hopefully you are familiar with the steps in the Life of a Contract and everyone's roles.
- ▶ Please see the list of handouts for tips and tricks for your POS contracts.....

Handouts

- ▶ **BPW Calendar 2021** - *your best friend*
- ▶ **APM 1-1** - *the rules of City contracting*
- ▶ **Contract Equity Communication** - *opportunities to purchase more equitably, right now.*
- ▶ **Top 10 Tips for Getting your POS Contract Right the First Time** - *you could have just read this and skipped this entire presentation.*
- ▶ **Myth Busters** - *invaluable information to read before freaking out*
- ▶ **Roles of People in the Life of a Contract** - *if you haven't heard enough about this already*
- ▶ **Glossary of Contract Jargon** - *excellent bedtime reading*
- ▶ **Checklist - The Life of a Service Contract** - *highly anticipated document I forgot to send you*

Conclusion & Thank You!

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