

# CONTRACTS TRAINING

*goods & services – crash course*

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# Making a Contract for the City:

- All written agreements must be made in the name of the "City of Madison."
- The contractual relationship must be approved by the Council, via existing ordinance authority, or a Resolution.
- The contract document must contain all applicable, mandatory City contract terms.
- The contract must be signed by a person who is authorized to do so.
- SEE APM 1-1 as your first resource!!

# Practical Tips

- First thing - **Read APM 1-1 on Contracting**
- Use OCA "Contract Drafting Request Form" :
  - > Employeeenet, Forms, Contracts:  
<http://www.cityofmadison.com/attorney/documents/posContractRequest.doc>
  - > Everything you need to get started.
  - > If you don't have answers to fill out this form, you might not be ready to make your contract. Check with your supervisor before proceeding.



# Important timing questions:

- > Is a Council resolution needed?
- > When do you want the services to start?
  - Work backwards from this date to figure out...
- > How much time you need
- > Did you use proper competitive selection process? See City Purchasing.
- > What is the Scope of Services, & who will write it?

# Authorization of Contracts

- ALL Contractual Relationships must be authorized by the Common Council.
- *What do we mean by "authorized?"*
- Some contracts for goods and services are pre-authorized via sec. 4.26, Madison General Ordinances (MGO)
- SOME are authorized in the Budget (this is now rare.)
- **If neither of these = you need a Resolution.**

# Authorization of contracts:

- ◉ What can the Purchasing Agent sign?
  - > Contract for goods, services or both meeting criteria of MGO 4.26 (see next slide)
  - > Money is in your budget.
  - > Contract form approved by OCA.
  - > Complies with other applicable laws.
  - > Purchasing Guidelines were followed / competitive process used/approved by Purchasing Agent.

# What can Purchasing agent sign?

- › Service Contract for 1 year or less
- › Or up to 3 years and no more than \$50,000/year
- › But... maximum of \$25,000 total, if not competitively selected (sole source, discussed later...)
- › *HINT: see POS contract form, bottom of last page, for a cheat sheet for what Kathy can sign:*

<http://www.cityofmadison.com/attorney/documents/posContract.doc>

# When must contract be signed by Mayor and Clerk?

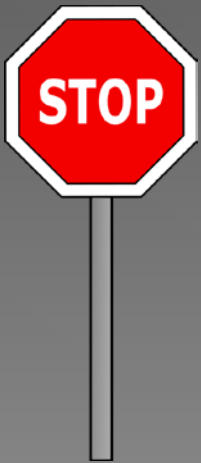
- Contracts needing a Resolution are almost always signed by Mayor/Clerk–
  - > Budget Amendments
  - > Service Contracts > 3 years
  - > Service Contracts 1-3 years and >\$50,000 per year
  - > “True Sole Source” over \$25,000
  - > Lack of competitive selection over \$25,000



# PURCHASING GUIDELINES

\*\* You cannot make a contract for goods or services if you did not follow the purchasing guidelines in selecting the contractor\*\*

<http://www.cityofmadison.com/finance/documents/PurchasingGuidelines.pdf>



If you did not follow these procedures, STOP and consult City Purchasing

# Purchasing – Competitive Selection

- ◉ Read and follow the Purchasing Guidelines on the Finance Website
- ◉ Competitive Process required for goods and services:
  - > < \$5,000 – Best Judgment
  - > \$5,000-\$25,000 3 Written Quotes
  - > >\$25,000 Formal Bid or RFP

# Exceptions to competitive selection:

- › Services over \$25,000 w/o competitive process, must have a Council resolution and meet one of the exceptions in MGO 4.26(4)(a).
- › The body of the resolution must:
  - Approve your selected contractor, by name
  - Make reference to the specific exception in 4.26(4)(a) that you used to bypass the competitive process
  - Must authorize the Mayor and Clerk to sign the contract.
  - See Sample Resolutions in Lara's memo to contract committee.

# Purchasing Tips:

- ◎ Plan ahead! Please give Purchasing:
  - > At least 2 months, start to finish, for a new RFP, through selection & contract signing
  - > 4 weeks for a new bid, through vendor selection and issuing the PO.
  - > 2 weeks to help w/ POS contract < \$25,000.
  - > 1 week for a sole source under \$25,000.
  - > 5 weeks for a sole source over \$25,000.

# What do to if you need a Resolution:

- Anyone can draft a resolution
- Alder or Mayor must sponsor
- Resolution must say who, what, when, and how much money (see APM 1-1)
- TIPS:
  - > Get contractor's full, legal, business name (DFI)
  - > Explain how contractor was selected and what they are going to do for the city
  - > Make friends with someone in your dept. familiar with Legistar and the Council deadlines

# Resolution Drafting Tips

- ◉ Sample Resolutions – see my recent memo to the Contracts Committee at this link: *(add link to OCA training page)*
  - > For services, goods, combo, under 4.26 if competitive process was used but over the threshold for Purchasing Agent to sign.
  - > Same info must be conveyed for any type of contract – see APM 1-1, page 1.
  - > Consider options for renewals, amendments

# Resolution Drafting Tips

- ◉ Sample Res – sole source
  - > For “sole source” or other exceptions to competitive bidding in a service contract.
  - > 4.26(4)(a) reasons should be listed in resolution.
  - > Don't forget to authorize Mayor/Clerk to sign it.
  - > Think you're done? Think again!
  - > Please make your “sole source” contractor familiar with City contract policies BEFORE introducing the resolution, & work on your scope of services.
  - > OK to use the time before adoption to finalize, but not to START negotiations.

# Making a Contract - review:

- All written agreements must be made in the name of the "City of Madison."
- The contractual relationship must be approved by the Council, via MGO or resolution.
- The written contract must contain all applicable, mandatory City contract terms.
- The contract must be signed by a person who is authorized to do so.



# Choosing Your Contract

- ◉ Types of Standard Contracts:
  - > Some available on EmployeeNet, under "Forms" → "Contracts"
    - POS, POS-Architect, POS-Design Prof, POS-Police, POS - PHMDC
    - Public Works boilerplates (see engineering)
    - "Back of the PO" is a mini-contract
  - > All of the standard forms have been approved by the City Attorney. Changes must be approved by OCA

# Contract drafting- who does it?

- For services - use sample POS contracts available on employeenet
- Purchasing should provide a sample in your RFP
- POS forms designed to be user-friendly
- Department using the contract will need to select the attachments for Par. 3 = Scope of Services, Schedule Payment
- DEPARTMENT responsible for Scope

# Contract Drafting responsibilities

- Department is responsible for the Scope of Services
- Purchasing will help with the Payment Terms and Payment Exhibit
- City Attorney does not negotiate fees or payment
- City Attorney only gets involved if the contractor has an issue with the **Legal Terms** in the contract

# DO NOT use contractor's legal terms or forms!

- If the vendor/contractor provides you a contract, don't sign it!
- Do NOT agree to any of their legal terms.
- Sometimes legal terms are hiding in a quote or proposal. If not sure, ask.
- Tell contractor must use City's form.
- If they insist, send contractor's form to City Attorney's office for review. Inform your sales person this will create delay.

# CONTRACT DRAFTING - Scope of Services

- The **department** using the contract is responsible for the Scope of Services.
- The Scope gives the down and dirty details: who, what, when, where and why, how much.
- Only YOU have the expertise to draft a Scope of Services that accurately explains exactly what you expect to get from this contract.
- #1 TIP = write a really good RFP.

# Practical Tips – Scope of Services

- 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 contact by the 5<sup>th</sup> of each month while the contract is in effect. The report shall include...X, Y, Z...”

# Practical Tips - Scope of Services

- Always say "who" is doing "what."
- Use numbered paragraphs or sections.
- 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.
- Don't forget to cover invoicing & payment.

# Scope drafting Options

- “Kitchen sink approach” = Attach or Incorporate RFP and contractor’s proposal/quote/price sheet, and anything else important.
- “Cut & Paste” = Attach only the relevant portions of RFP and contractor’s proposal.
- “Perfectionist” = write it from scratch.
- “Plagiarist” = Use materials from contractor, technical specs, product descriptions.
- “Lazy approach” = let the contractor write it.



# Practical Tips – Scope of Services

- *I wrote a Scope of Services-  
now what do I do with it?*
  - > Give your Scope of Services a name, label it accurately on the top of the Scope and in Paragraph 3 (Attachment A, Exhibit 1, etc.).
  - > POS Contract - Scope of Services is incorporated through Paragraph 3.
  - > Intro to Paragraph 3 can be modified to give a taste of what the contract is about.
- attach any other Exhibits through Par. 3.

# Practical Tips – Scope of Services

- To attach or Not to attach?
  - > “Attached herein” means really attached.
  - > “Incorporated by Reference” means not attached. Must very precisely identify the documents and where they can be found if using this option.
  - > should use Order of Precedence if incorporating by reference or doing the “kitchen sink” approach.

# Tips – Mandatory Contract Provisions

- ◉ Make all prospective contractors aware of the city's Mandatory Terms...
  - > By working through City Purchasing, using RFP with the Standard Terms & Conditions & the appropriate sample form contract.
  - > If a sole source must be used, hand them a copy of the POS form contract *before* you agree to any sort of contractual relationship.
  - > Tell contractor city terms are MANDATORY...
  - > Include this in any award letter or early correspondence

# City's Mandatory Contract Provisions

- Nondiscrimination 39.03(9)(b)
- Affirmative Action 39.03(9)(c)
- Termination for Convenience
- Sweatfree Apparel 4.25
- Living Wage 4.20
- Equal Benefits and Ban the Box – service contracts over \$25,000
- Indemnification and Insurance APM 1-1
- None of these can be changed, this is why you must start with an approved city form contract.

# Signatures Process – in general:

- ◉ **Contractor always signs first**
- ◉ PDF signature is OK as long as they send you the whole contract- not just a scan of the signature page
- ◉ City signs last
- ◉ City Clerk is the official keeper of all city contracts – hard copies.
- ◉ Signed contracts also must be scanned into Sharepoint Contract repository

# Contracts signed by the Mayor and Clerk:

- Contracts signed by Mayor/Clerk must be routed through the City's Contract Routing Database, a program of the Clerk's office.
- Dept using the contract is responsible for signature routing thru this database.
- Someone in your dept must know how to use the contract routing database.
- You cannot modify or skip names or departments on the routing slip

# Contracts signed by **Purchasing:**

- See bottom of POS for when Purchasing can sign the POS
- Get vendor signature first
- Consult with Purchasing for the appropriate MUNIS procedures – POS contracts to be signed by Kathy Schwenn are entered into MUNIS as part of the requisition process
- Contract scanned into Sharepoint

# Avoiding Delay

- ◎ Avoid surprises and delay!!
- ◎ You're on the right track if you:
  - > Determine what authorization is needed
  - > Use appropriate competitive selection process
  - > Choose right form contract & show it to contractor well ahead of time
  - > Plan backwards from effective date
  - > Build in time for council resolution AND for help from purchasing or City Attorney's office if needed



# Practical Tips – Avoiding Delay

- › Build in time for help from City Attorney
- › Sole sources, big national corporations can be more “difficult”
- › Insurance & indemnification disputes take time
- › Be supportive, not critical, of the other agencies & their roles in the process (OCA, Risk, DCR, Clerk)
- › Avoid delays in ROUTING by putting your contract packets together correctly
  - (get trained by the Clerk’s office)

# After the Contract is Signed

- ◉ Maintain a Contract Log for your Dept:
  - > A list of all active contracts:
  - > Parties, Effective Date, Expiration Date, Authorization Authority (Res. ID#) Tickler for Renewal or other important dates.
  - > Especially important for *automatically renewing* contracts, or those that require some notification toward the end.
  - > New Sharepoint Repository is your friend – get trained on how to use it.

# Conclusion

- ◉ Plan Ahead!
- ◉ Learn the City process
- ◉ Read APM 1-1
- ◉ Consult Purchasing Guidelines.
- ◉ See OCA Training page/ Contracts
- ◉ Consider joining the “Contracts Committee” staff group
- ◉ Attend Citywide Contracts Training

# Thank You !

- ◉ Office of the City Attorney - City Attorney Michael P. May and Assistant City Attorney Lara Mainella – 266-4511
- ◉ Finance Department, Purchasing Unit – Kathy Schwenn – 266-4026