



California
DEPARTMENT OF TECHNOLOGY



The Project Academy Series: Contract Management and Negotiation

January 30 and 31, 2014



Agenda

- Take Away
- Contract Parts 'n Pieces
- Procurement Phase
- Components of a Strong Contract
- Attributes of a Contract Manager
- Contract Manager's Role
- Contract Amendments
- Contract Closeout
- What Is the Answer?



Introductions

■ Russ Nichols

- Department of Corrections and Rehabilitation, Enterprise Information Services
- Project Director, Strategic Offender Management System

■ Mary Winkley

- Department of Technology, Consulting and Planning Division
- State Department Project Director
- Vendor



Take Away

- Purpose is to ensure alignment of expectations between State and Vendor throughout the project
- It begins with communication during the procurement
- Mantra:
 - Align expectations between State and Vendor

Lack of Clear Communication



How the customer explained it



How the project leader understood it



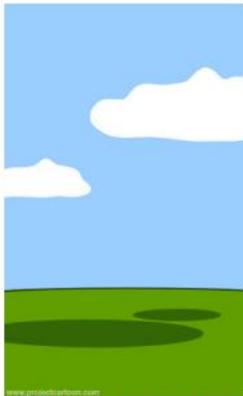
How the analyst designed it



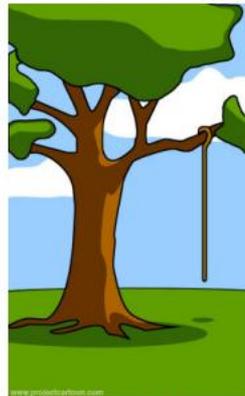
How the programmer wrote it



How the business consultant described it



How the project was documented



What operations installed



How the customer was billed



How it was supported



What the customer really needed



Procurement/Contract Parts 'n Pieces

- **Std 213 – Becomes 1st page of contract**
 - Includes Order of Precedence
- **Statement of Work – unique to project**
- **State's Terms and Conditions (401)**
- **Special Terms and Conditions**
 - Project, Personnel, Software, Hardware
- **Request for Proposals**
- **Vendor's proposal**



Procurement Phase

■ Partnership

- State and vendor each have responsibilities
- Both parties' responsibilities should be described in procurement and contract documents
 - State identify skill set and availability of SMEs
 - Number of days State will consume reviewing deliverables
 - Who is updating Project Schedule and how other party provides their information
- Include glossary in procurement documents



Procurement Phase

- Expect best performance but plan if worst happens
 - Describe process, roles and responsibilities, criteria, and timeframes for State *and* vendor's role:
 - Deliverable Acceptance
 - Deliverable Rejection
 - Dispute Resolution (besides Provision 41)
 - Corrective Action Plan
 - Cure Notice



Procurement Phase

- **Both parties need to be realistic**
 - State cannot have scope, schedule, and budget all be number one
 - Vendors should identify unrealistic expectations
 - Reality check - market research, bidders' questions, number of interested bidders
 - State's proposed procurement schedule
 - Include SPR, DOF/Legislative approvals
 - Bidder's proposed project schedule
 - Based on 100% State SME availability



Procurement Phase

- **Do not ask for unnecessary items**
 - Vendor timesheets if deliverables-based
 - Deliverables you will not use or will not be basis of decisions
 - Report of activity after the fact with no lessons learned
 - Unlimited number of review cycles
 - Accept or reject within a few cycles
 - If not, is indicator communication not working
 - Any terms you do not intend to enforce
 - Cost is passed on to State by Bidder



Procurement Phase

- Know Department's priorities during bidder discussions and be flexible
 - Project: scope, schedule, budget, quality
 - Letter of credit versus performance bond
 - Liquidated Damages
 - Service Level Agreements
 - Time to review deliverables



Procurement Phase

- Understand your approach to the work
 - Solution or staff augmentation
 - Vendor deploying COTS or doing development
 - Refinement throughout the project lifecycle
 - Deliverables can change scope (e.g., by narrowing it through requirements definition)



Procurement Phase

- Establish rules of engagement during project
 - Who vendor gets answers from – need to have authority to make decision for department
 - What is process if answer is unsatisfactory to vendor
 - Includes escalation criteria, timeframe, roles and responsibilities, and process within project



Procurement Phase

- Define – for all responsibilities, including those that are not deliverables (e.g., replacement of key personnel)
 - Who is responsible
 - What they are doing
 - Process to follow
 - Criteria to evaluate
 - Timeframe for activities
 - for vendor *and* State



Sample Best Practice

- Vendor will submit final deliverable to the State Project Manager in electronic form. State will review against approved DED and provide acceptance or rejection within ten (10) state business days. If acceptable, State will sign and issue DAD to vendor. If unacceptable, State will reject in writing and identify DED criteria that were not met and submit to vendor.



Procurement Phase

■ Requirements Definition

- One of the weakest parts of projects
- Ensure technical requirements developed per IEEE standards
- Include all types of requirements: functional, project management, application, network
- Independent Verification and Validation (IV&V) vendor engaged at requirements definition when RFP being prepared will increase success



Procurement Phase

- Milestones and payments should represent project progress, not process execution
 - Software in production environment, not writing test scripts
- Understand and acknowledge project risks so vendor and State are both aware and can mitigate



Components of a Strong Contract

■ Statement of Work (SOW)

■ Each responsibility clearly defines:

- Who is

- Doing what

- By when

- Using what process

- Being evaluated by what criteria

■ Identifies deliverable dependencies

■ Includes deliverable acceptance and rejection process



Components of a Strong Contract

■ Statement of Work

- Can supersede aspects of State's terms and conditions (401) if 401 section starts with, "Unless otherwise specified in Statement of Work..."
- Unique terms and conditions
 - Tools for the State (e.g., liquidated damages) – do not give them up without evaluating implications
 - Ensure not too onerous on vendor without significant State benefit



Components of a Strong Contract

- Clear exit criteria for each stage
- Off-ramp should it not work out
 - Think contract amendment not termination
- Expectation that likely to amend as team gains greater knowledge (not a bad thing!)
- Pays vendor greater percentage for re-useable deliverables (software) than planning documents (Design Document)



Attributes of a Contract Manager

- Detail oriented
- Understands and comfortable with metrics
- Comfortable speaking up to those above him/her in chain of command
- Pro-active
- Alert to risks
- 411 before 9-1-1
- Understands it is not personal



Contract Manager's Role

- **Know your contract**
 - If scope reduced during procurement and team still wants it – remind them of decision
 - Understand how deliverables can impact contract. Design document can change scope.
- **Be a broken record to your team about what the contract requires**
- **Understand business need for deliverable**
- **Manage deliverable evaluation process**



Contract Manager's Role

- Ensure processes are defined, documented, understood, and followed by State and vendor
- Understand terms
 - Hold back versus withhold
 - Performance Bond versus Letter of Credit
 - Liquidated damages – not punitive



Contract Manager

- Use tools to manage information
 - Deliverables (both payable and non-payable)
 - Due dates (DEDs, status reports, deliverables)
 - Expected payments
 - Expected hold back
 - Actual payments made
 - Quality Metrics (number of days late, number of review cycles, number of times late)
- Greatest indicator of future performance is past performance – review metrics



Contract Manager

- **Ensure appropriate payment at appropriate time**
 - Not before deliverable accepted by the State
 - Not six months after deliverable accepted by the State
 - Do not gift public funds



Contract Manager

- **Seek out contract weaknesses**
- **Be prepared to offer suggestions to strengthen contract so that when amendment needed you are ready**
- **Know difference between contract and project**
- **Your systems integration vendor is not responsible for a successful project – the State is**



Contract Manager

- Know your strengths and weaknesses
- Keep your tools current
- Know that you support a large team: state and vendor
- Engage your Project Manager
- Own your responsibilities



Contract Negotiations

- Expect amendment – no, plan for it!
- Not a bad thing
- Use as opportunity to shore up weakness
- Know what motivates your vendor. It is not always more money!
 - Successful = more California business
 - Succeed in California = more national business
 - Good reference = more business



Contract Negotiations

- Understand why you are amending contract. Be clear and specific.
- Engage your General Counsel to guide you, but do not bring to early meetings with vendor. It sets an adversarial tone.
- Understand what the vendor wants/needs.
- What are you willing to negotiate
 - Service Levels
 - State review cycle time
 - Elimination of deliverable



Contract Amendment

- Engage your procurement staff early
- Engage Department of Technology early
- Do not poison the water during the amendment process
- If performance issue, assess vendor-state relationship first
 - Want to continue with vendor?
 - Amend, not terminate, to end project
- You have many stakeholders



Contract Closeout

- Ensure all deliverables accepted
- Ensure State has access to all deliverables and project repository when vendor gone
- Ensure all documentation (system, training, etc.) has been updated
- Acquire source code in machine-readable format



Contract Closeout

- Ensure training provided on most recent software version for those maintaining it
- Ensure knowledge transfer provided
- Ensure licenses (including third-party) are in State's name



Learn from our experiences!

■ Apply lessons learned

- Get from colleagues in your department on other projects
- Get from CalTech
- Lessons learned database coming
- Network with your colleagues here



What's the Answer?

- Why do we get detailed in procurement and contract documents?



Thank you!