



Strategic Sourcing: A New Approach to IT Procurement

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Government Advisory Committee

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Presentation Overview

- Contract Templates
 - Benefits for the Commonwealth
 - Old Language/New Language Comparison
- New Approach: Memorialize the Deal
- Procurement vs. Strategic Sourcing
- SCM Is Leading Change
- Strategic Sourcing Implementation

Contract Templates

Supply Chain Management (“SCM”) is finalizing contract templates for the following five IT categories:

- Hardware with maintenance
- Hardware without maintenance
- Service
- Software license
- Service level agreement

Contract Templates cont.

What's different . . .

- Moves into practice the concept that mandatory Ts & Cs are limited to *Code* and all other Ts & Cs are negotiable.
- *Code* driven Ts & Cs not included in body of contract, but referenced by URL.
- Deal, parties and pricing are apparent; not lost in 300 pages of RFP and proposal.

Contract Templates cont.

Introduction of contract templates is a significant step toward achieving consistency in contract management.

- All SCM strategic sourcing consultants now share the same contractual starting point.
- Templates are adaptable to the substance of particular deal.
- Templates provide greater consistency and more efficient risk management.



Contract Templates: Comparison - Warranty Services

Old Language

Contractor warrants the operation of the Software Product identified in this Agreement for a minimum of twelve (12) months (or such longer period as may be agreed to) after installation. Software Products that fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction or errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support and all travel, labor, and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

Contractor warrants the operation of the software/firmware products identified in the Schedule for a period of twelve (12) months after acceptance. Products failing to meet vendor's published specifications will be returned (at the Contractor's expense) for replacement. Contractor agrees to replace the software/firmware product within three (3) days after receipt of the returned product.

In addition, the Contractor agrees to provide all patches, fixes, revisions, updates, upgrades and releases to both the software/firmware and applicable documentation, which may be released by the software developer, along with unlimited telephone support for the duration of the warranty period.

New Language

At any time with regard to General Warranties and during the Warranty Period, Supplier shall provide the following warranty services (including unlimited telephone support and all necessary travel and labor) without additional charge to maintain the Software in accordance with the Requirements:

Known Defects: Promptly notify the Commonwealth of any defects or malfunctions in the Software or Documentation of which it learns from any source, correct any such defects or malfunctions or provide a work around until corrected, within ____ (__) days of knowledge of such defect or malfunction and provide the Commonwealth with corrected copies of same.

New Releases: Provide to the Commonwealth no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, access modes, and enhancements to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

Coverage: Twenty-four (24) hours per day, seven (7) days a week, provide to the Commonwealth all reasonably necessary telephone or written consultation requested by the Commonwealth in connection with its use, problems and operation of the Software.

Service Levels: Respond to problems with the Software identified by the Commonwealth in no more than one (1) hour after notification. Resolve all problems according to the following:

- Priority 1 (System Down) within six (6) hours
- Priority 2 (Certain Processing interrupted or malfunctioning but system able to process) within twenty four (24) hours
- Priority 3 (minor intermittent malfunctioning, system able to process data) within three (3) days.

The level of severity (e.g., critical, significant, other), shall be defined by the Commonwealth.

[Omitted Software Evolution, Escalation Procedures and Remedies due to space]



Contract Templates: Comparison - ADR for Disputes

Old Language

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

New Language

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the VITA no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Supplier agrees to submit any and all contractual disputes arising from this Contract to VITA's alternative dispute resolution procedures. Supplier may invoke VITA's alternative dispute resolution procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.



Contract Templates: Comparison - Confidentiality

Old Language

The Contractor agrees that all software installed and utilized on Contractor's Assets contains information proprietary to the Commonwealth and other third party software vendors and that disclosure of such information could cause irreparable damage to the Commonwealth of Virginia and its citizens. Therefore, Contractor agrees to hold all information and or software disclosed through operation of this Agreement in strict confidence, as required by this Section and use such information only in performance of this Agreement. No information or software utilized by the Commonwealth while at Contractor's facilities shall be duplicated or furnished to others without the prior written consent of VITA.

New Language

Each Party agrees to (i) hold in strict confidence all Confidential Information of the other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not to transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third party. Notwithstanding the foregoing, the Commonwealth may disclose the System Software as delivered by Supplier to subcontractors, contractors or agents of the Commonwealth that are bound by a non-disclosure agreement with the Commonwealth. The receiving Party agrees to comply with any confidentiality agreements between the disclosing Party and any third party related to confidential or proprietary information of such third party. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

New Approach: Memorialize the Deal

- Old approach did not produce effective contracts.
- Under SCM's new approach, the contract will memorialize the deal within the 4 corners of the document.
 - Emphasis to have the substance and relevant details embodied within the four corners of a contract.
 - Plain and clear language, with consistent structure.
 - Contract stands alone – RFP and proposal not included.
 - Balanced – promotes fact-based versus positional negotiation.

New Approach: Memorialize the Deal cont.

- Under SCM's new approach, the contract will memorialize the deal (cont).
 - One is able to read a contract and know what has been procured, service levels, roles and responsibilities of both parties.
 - Both supplier and the Commonwealth are provided greater predictability.
 - Removes guesswork from contract management.
 - Promotes more efficient contract administration.

Procurement vs. Strategic Sourcing

- Introduction of contract templates is a significant component of moving from traditional procurement to strategic sourcing.
- Contract is introduced early in the sourcing process and is integral to sourcing selection.
 - Contract used in proposal evaluation.
 - Promotes risk identification and mitigation.
 - Fewer resources needed to reach better decisions.
 - Reduces overall cycle time.
 - Incorporates commercially standard contracting language and practices: new to state government, but familiar to suppliers.

Procurement vs. Strategic Sourcing cont.

Including contract with the RFP makes contract negotiation part of sourcing process. This promotes:

- Effective service level agreements.
- Performance based-contracting.
- Expectation that agreements include ongoing cost reduction and performance improvement.



SCM Is Leading Change

- In addition to VITA contracts, SCM is responsible for managing statewide and infrastructure-related IT agreements under VITA's authority via agency transitions.
- SCM asked agencies to submit copies of all IT "contract items" for analysis.
 - A contract item includes any commitment or ongoing obligation; many were purchase orders ("POs") without contracts.
 - SCM has analyzed over 1,100 contract items.
 - Approximately 400 contract items expired prior to transition.
 - SCM is awaiting notification of renewal from the agency in question, or has asked the agency to send SCM a copy of the contract if it has been renewed.

SCM Is Leading Change cont.

- SCM asked agencies to submit copies of all IT “contract items” for analysis (cont).
 - Approximately 700 contract items have been transitioned to SCM.
 - Some of these contract items reflect non-contract purchases.
 - Non-contract purchases lose the opportunity to leverage buying power and capture other benefits of consolidation.
 - SCM will be the central repository for nearly all Commonwealth IT contracts after large agencies are transitioned (December 31, 2004).
- The contract consolidation process illustrates the need for Strategic Sourcing.

Strategic Sourcing Implementation

Strategic Sourcing approach requires acceptance and adoption by SCM staff.

- SCM staff recently received first installment of Strategic Sourcing process training.
- SCM Staff receiving first installment of standardized contract template training this week.
- Strategic Sourcing emphasizes need for SCM staff to accurately identify client's needs (and not what the client thinks they want).
- Strategic Sourcing also relies upon increased ownership by SCM staff in sourcing process. SCM staff will have a less administrative role and provide more hands on guidance.

Strategic Sourcing Implementation cont.

Contract consistency is a significant benefit of Strategic Sourcing.

- Greater consistency leads to:
 - Happy suppliers: contracting process will be smoother, more predictable, with fewer surprises.
 - Improved supplier management: Strategic Sourcing provides a common framework that will help produce data to make an “apples to apples” comparison of suppliers.
 - More efficient contract administration.



Questions?

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