

OGS Procurement Services Group 2010 State Purchasing Forum



NYS OFFICE OF GENERAL SERVICES

Serving New York for Fifty Years

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Contract Administration

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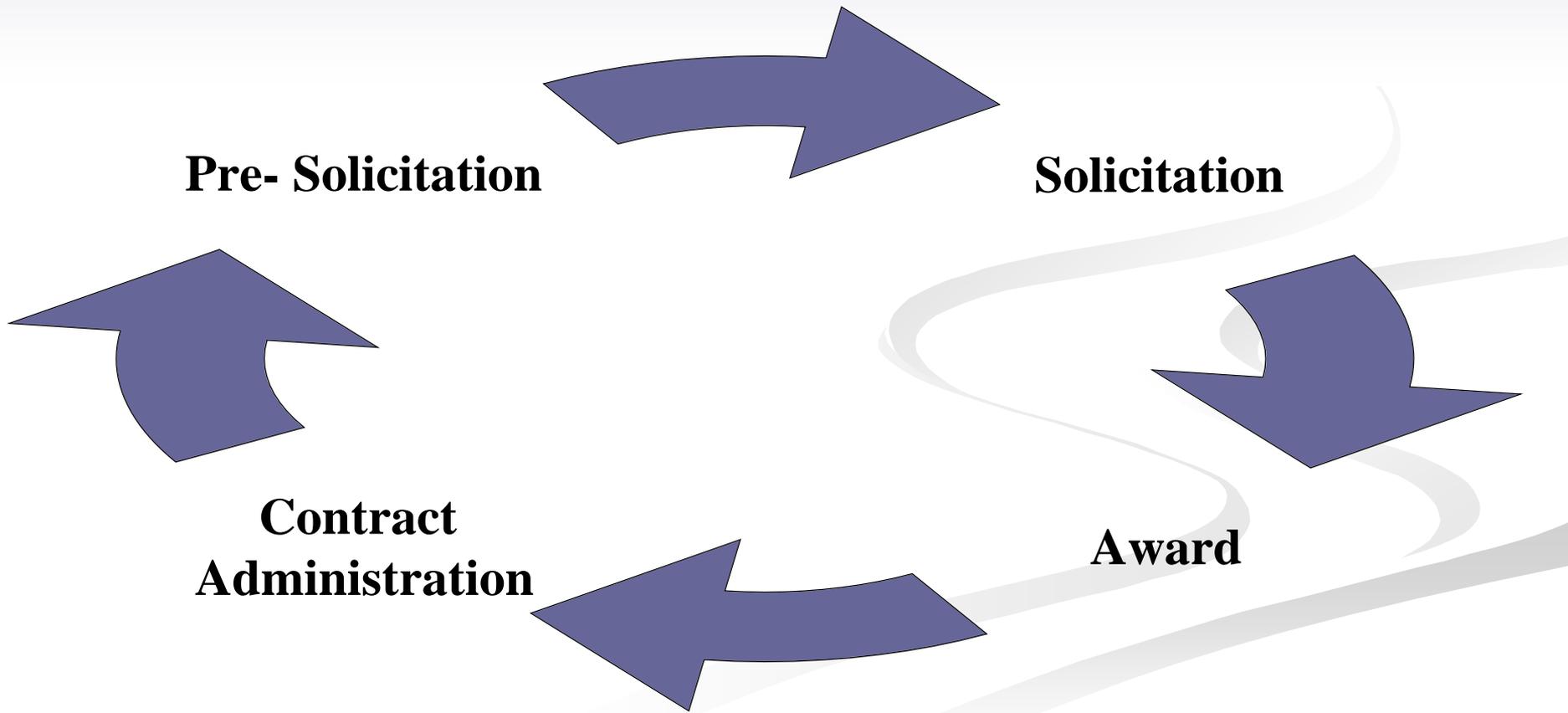
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What is Contract Administration?

The activities that take place to ensure compliance of the terms and conditions after a contract has been awarded

Contract Administration is Encompassed in the Contract Management Cycle



Questions to ask During Pre-Solicitation

- Who?
- What?
- When?
- Where?
- Why?
- How?



The Solicitation

The solicitation document influences the ability to effectively perform the contract administration process

Why...?

- You can only administer what is defined in your contract
- This is where you identify your parties:
 - The Authorized Users
 - The Vendors / Contractors
 - The Administrator

Because...

- The solicitation document define the needs and expectations of all parties involved (including the end user)
- Consider limitations and available resources

Specify Roles & Responsibilities

- Contract Administration team:
 - Contracting Officer (Administrator)
 - Subject Matter Expert
 - Legal Counsel
 - End User
- Establish and maintain a clear separation of duties

Solicitation Document Terms & Conditions

■ Some T & C's to Consider:

- Description
- Roles & Responsibilities
- Delivery Dates
- Data Reporting
- Testing
- Inspection & Acceptance
- Warranty Provisions
- Personnel Requirements
- Critical Milestones
- Meetings
- Price Adjustments/Updates

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graph TD; A[Contract] --- B[Agency's Responsibilities]; A --- C[Contractor's Responsibilities]
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Contract

**Agency's
Responsibilities**

**Contractor's
Responsibilities**

AFTER the CONTRACT is AWARDED...

**THIS IS WHEN THE ACTUAL CONTRACT
ADMINISTRATION BEGINS**

Contract Administration

Examples of the responsibilities

- Creating and maintaining a comprehensive history of the life of the contract.
- Monitoring the contract and its activity.
- Interceding when necessary to keep the contract on a smooth course.

Know the T & C's....

Understand the Terminology

Ask yourself:

DO I understand the terms and conditions included in the contract award?

CAN I express this understanding to others?

WOULD OTHERS readily understand the terms and conditions in the contract?

Organization of Documents

- Designate Storage location:
 - Sales reports
 - Contract related documents
 - Materials submitted by contractors
 - Expired contracts for audit and legal reviews

Performance Considerations

- Ensure end user is receiving supplies or services specified in the contract award
- Is it the:
 - Right Product (Product Substitution)?
 - Right Price?
 - Right Quantity?
 - Right Place?
 - Right Performance?
- Is the End User Satisfied?

Performance Measuring

- Progress reports
- Site visits
- Discussions
- Customer Survey
- Correspondence (e-mail, letters, etc.)
- Payments
- Sales Reports
- Employee payroll records
- Weekly or monthly service reports

Monitoring the Contract

- Quality
- Schedules
- Acceptance
- Changes
- Conflicts
- Data
- Contractor Performance
- Budget & Payment
- Subcontractors

**DOCUMENT
EVERYTHING!**

LOOK FOR SIGNALS !



Be aware of signals showing there's a problem!



REMAIN WATCHFUL

- Ensure compliance with contract requirements/specifications:
 - procuring contract product/service
 - purchase orders are accurate
 - received correct product/service
 - invoices
 - prompt payment legislation
 - take advantage of discounts

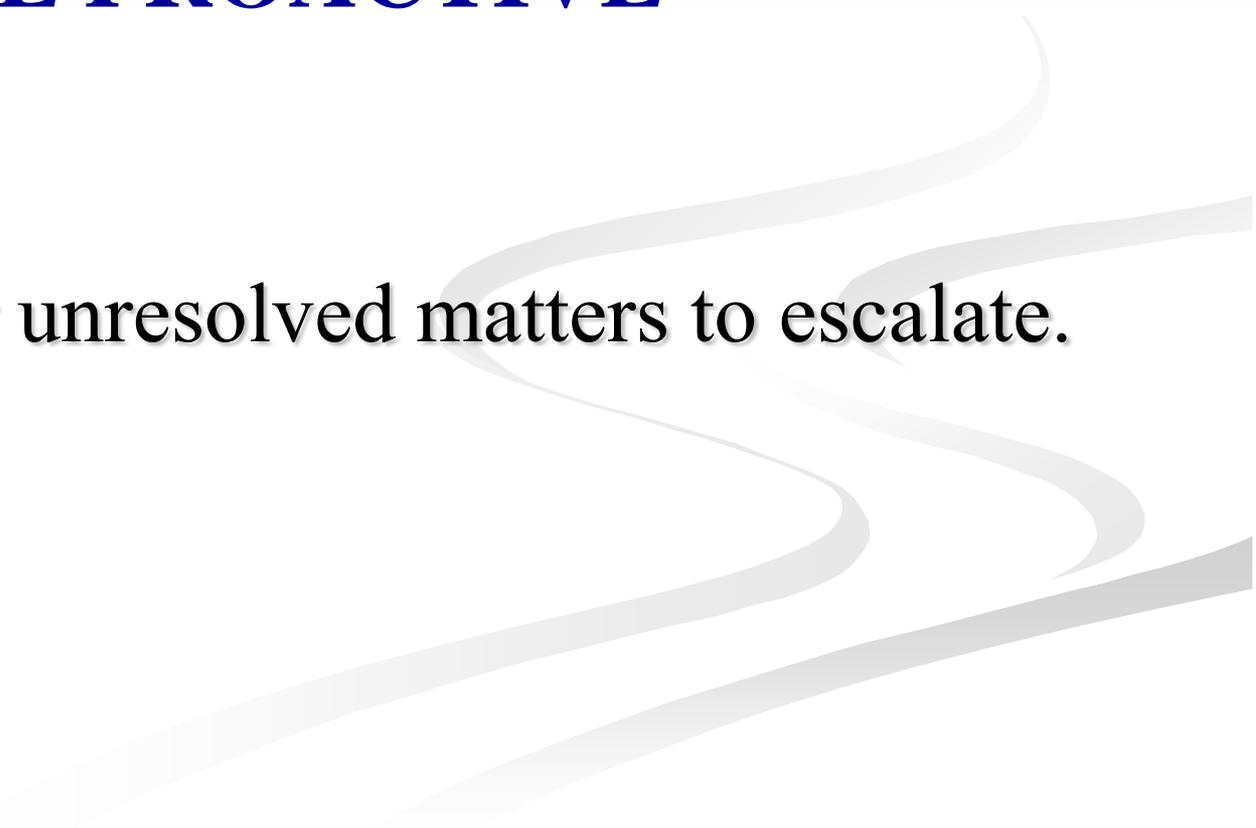
Communication

- Establish and maintain a good working relationship with all parties in the contract administration process
- End User and Contractors:
 - Are contract terms & conditions being met?
 - Remedy Defects/ Improper Service (During Inspection Process)

Address Problems as They Occur

BE PROACTIVE

Don't wait for unresolved matters to escalate.

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Look for Feedback

■ Proc 111 - Contract Deviation Form

STATE OF NEW YORK - EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP
CORNING TOWER
GNARESP
ALBANY, NEW YORK 12242

AGENCY REQUEST FOR INSPECTION OR REPORT OF CONTRACT DEVIATION

THIS IS A REPORT OF DEVIATION IN SERVICES OR ITEMS ORDERED FROM CONTRACTS ISSUED BY PROCUREMENT SERVICES GROUP.
 AN INSPECTION BY PROCUREMENT SERVICES GROUP IS REQUIRED.

AGENCY NAME & ADDRESS		TELEPHONE NUMBER	FAX NUMBER	
AGENCY EMAIL ADDRESS			CONTRACT NUMBER	
CONTRACTOR'S NAME & ADDRESS				
GROUP NUMBER AND COMMODITY/SERVICE		PRODUCT/SERVICE DESCRIPTION		
PURCHASE ORDER NUMBER	PURCHASE ORDER DATE	QUANTITY ORDERED	DOLLAR VALUE	DELIVERY DATE
NATURE OF DEVIATION (INCLUDING NON-DELIVERY)				
AUTHORIZED SIGNATURE			DATE	
FOR OGS USE ONLY				
DATE LOGGED IN:			DATE CLOSED:	

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111(Contract Deviation).doc:ks {4/01}

Feedback (cont'd)

■ Contract Performance Reports

**State of New York
Office of General Services
PROCUREMENT SERVICES GROUP
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.: _____ **Contractor:** _____

Describe Product* Provided (Include Item No., if available): _____

***Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

_____ (over)

Agency: _____ Prepared by: _____

Feedback (cont'd)

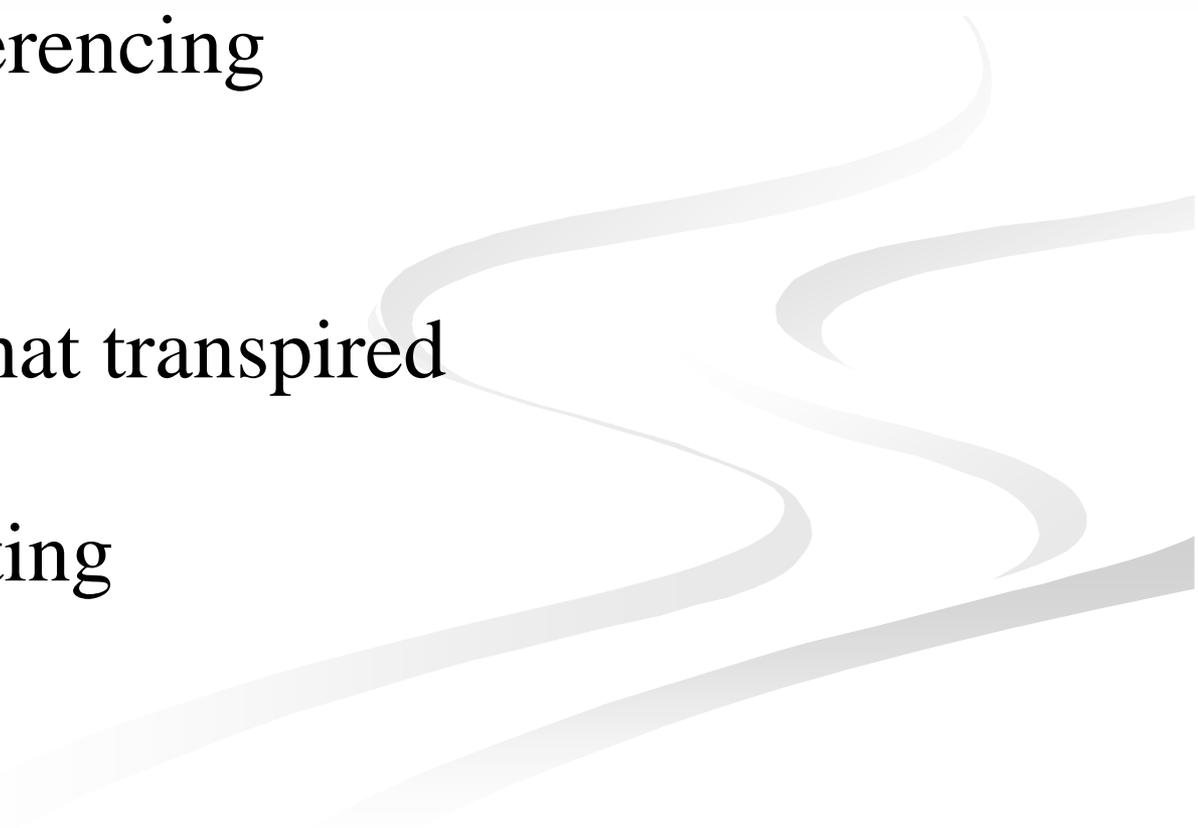
- Customer Services
 - Contractors
 - End Users
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If there is a problem.....

COMMUNICATE & INVESTIGATE

- Listen Actively
- Gather Detailed information from all involved parties
- Determine the problem
- Achieve a fair solution within contract constraints
- Don't forget to Follow-up

Methods to Communicate Problem

- Schedule a meeting:
 - Teleconference
 - Web conferencing
 - In person
 - Document all that transpired
 - Confirm in writing
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Rectify the Problem

Solutions & Alternatives

- Withhold Payments
 - Partial Payments
 - Buy Against
 - Liquidated Damages
 - Contract Cancellation
 - Responsibility Meetings
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Vendor Responsibility Problem?

How to determine it?

If there is a problem. What can you do?

WOULD YOU....

- Ignore it and hope it doesn't effect your contract?
- Read as much as you can about the issue on the Internet and make your own decision?
- Discuss it with your supervisor?
- Discuss it with your legal office?
- Ask contractor for a written explanation?
- Invite contractor in for a meeting?

USE CRITICAL JUDGMENT

- How does this relate to others in the same industry?
- How does this impact your contract?
- Ask questions in writing, preferably in formal letter, not simply an email.
- Speak with vendor, then document conversation in confirming email to vendor.
- Continue to question if responses don't appear to make sense.

EACH CONTRACT IS UNIQUE

- Responsibility must be considered on the basis of the contract under consideration.
- Must allow due process – opportunity to be heard before suspending or terminating a contract.
- Request written information from vendor or invite vendor to attend a responsibility meeting.
- Do not make final determination until after meeting.
- Decision must be made in the best interests of the State.

RESPONSIBILITY REVIEW PROCESS

- Invite vendor to meeting, advising that your agency has obligation to make a responsibility determination under State Finance Law §163(9)(f). (Reference FLIP)
- If attorney will be present, must advise and offer vendor opportunity to bring attorney if desired.
- Set the date, time and location in invitation and advise failure to confirm and attend will be deemed non-responsive and may result in suspension until the issues are resolved.
- Identify issues to be discussed so vendor is prepared with necessary documents or people to respond to questions.

REVIEW PROCESS

- Create Agenda to keep focused during meeting
- Take notes during the meeting to have a written record
- Create “meeting minutes” as the record of the meeting
- Establish timeline for completion of process

FINANCIAL EXAMPLE

- Furniture contract extension
- D&B reported numerous unsatisfied tax liens from other states
- Questioned financial ability and integrity
- Contractor provided proof of satisfaction
- New office manager
- Agency considered past performance with OGS
- Contract extended 12 months

LEGAL AUTHORITY EXAMPLES

- **Paging Company**
 - **Office Supplies**
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INTEGRITY EXAMPLES

- **Temporary Services contract** unlicensed nurses
- **Moving Services contract** submission of altered certified payroll records
- **Floor covering contractor** manager in prior company failed to fund pension plan and worked deal with the US Attorney

PAST PERFORMANCE EXAMPLES

IT Services Consulting Contractor

- Commenced lawsuits in 4 other states for non-payment on government contracts
- Counter claims by states
- Confidential settlements paid by Company
- No past performance history within NYS

MAKING A DETERMINATION

Consider the following options:

- Suspension until issue is resolved
- Denial of Assignment request
- Denial of Extension of term
- Extension/continuation with conditions
- Termination of the contract

Ethics in Contract Administration

- Stewards of Public Dollars, it is critical that we are held to highest standards of ethical behavior
- The Procurement Guidelines:

<http://www.ogs.state.ny.us/procurecouncil/pdfdoc/guidelines.pdf>

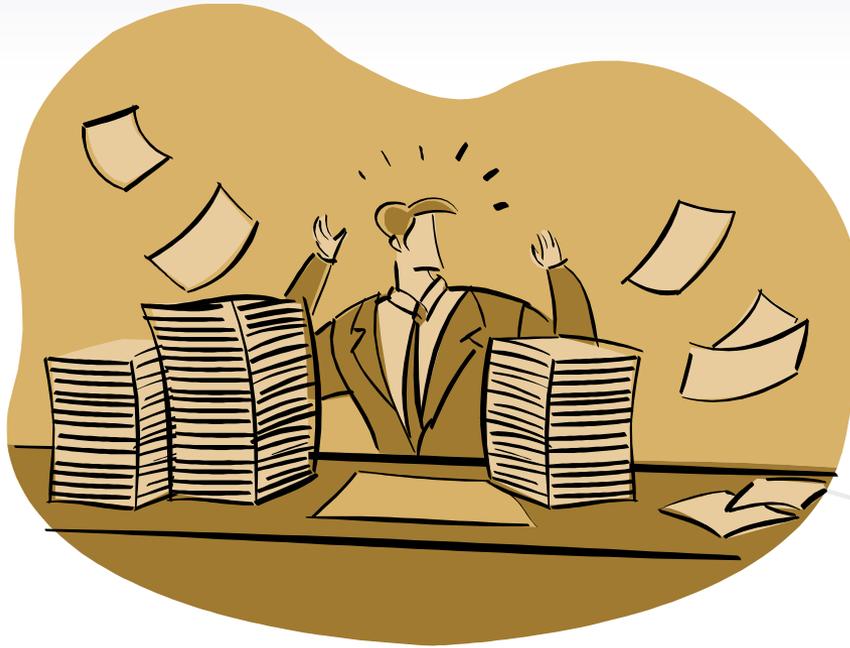
Useful Resources

- Internet
- Networking :
 - National Association of State Procurement Officials (NASPO), <http://www.naspo.org/>
 - National Institute of Government Procurements (NIGP), <http://www.nigp.org/eweb/>
 - NYS Association of Municipal Purchasing Officials, Inc. (SAMPO), <http://www.nysampo.org/>

Useful Resources (cont'd)

- Library
 - Agency Legal Counsel
 - Consult other Agencies
 - Peer to Peer Programs
 - Contact PSG for Assistance
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We're All in the Same Boat



Remember....

Stay Calm, Stay Focused

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Questions?



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1960 - 2010

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