

Project Contracts

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PMG 323

Lecture 1





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definitions***

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Chapter
01

Some important definitions



Important Definitions about
project contracts





Contract

‘Contract’ as the term specifies is an agreement between two parties in general. In project management, it’s a formal agreement between a buyer and a seller (more often referred to as supplier). The agreement is made to procure goods and services required for the agreed project.

This document needs to be prepared by the Project Manager (or the contract project manager if assigned). It is in coordination with Procurement Manager during the project planning stage. It has to be documented as a Procurement Management plan, which is a part of the primary Project Management Plan.



Contract management

Contract Management, a part of the Project management, deals with the vendor/seller/supplier (as termed in the contract). It also manages the procurements according to the terms and conditions set in the 'Contract.' The terms and conditions are agreed mutually between the buyer and seller. Contract management is the art and science of managing a contractual agreement throughout the contracting process.

Importance of Contracts for Project managers



Hidden Hazards

Many contract drafting traps are invisible to non-lawyers. It takes much less skill to critique what is in an agreement than it does to identify and correct what is not – things like remedies for breach, rights of termination, intellectual property protections, or correct descriptions of what the other party is supposed to do. As a result, entrepreneurs and other business persons can overestimate their ability to competently negotiate commercial agreements without legal assistance. Sometimes this leads to painful surprises.

Importance of Contracts for Project managers

Enhancing Different Perspective

Most commercial agreements involve one party purchasing some type of good or service from another party, or a combination of goods and services. Thus, one party is often considered a “buyer,” “customer” or “client,” and the other a “seller,” “vendor,” “provider” or “supplier.” For simplicity, we’ll think in terms of buyers and sellers.

Importance of Contracts for Project managers

Enhancing Different Perspective

First, sellers often have standard contracts that they routinely present to buyers. In many cases, these standard contracts were drafted by the seller's lawyer months or years earlier and were loaded up with terms, both relevant and irrelevant, that favor the seller.

Consequently, it is often the buyer who is faced with reviewing a new and potentially confusing agreement.

Importance of Contracts for Project managers

Enhancing Different Perspective

Second, the buyer is often at an informational disadvantage. This is because sellers generally know more than their buyers about the goods or services being sold and about how to protect their interests in transactions involving those goods or services.

Third, sellers might be slightly more apt to breach their commitments than buyers, given the generally more significant performance challenges facing sellers – e.g., producing and transporting goods on time, developing software on time, competently providing specialized services, and so forth.

Importance of Contracts for Project managers

Enhancing Different Perspective

In most contract situations, therefore, it is the buyer who needs more coaching on how to protect his or her interests. That said, where relevant, issues of particular importance from the seller's perspective are also addressed – e.g., developing solid but workable template agreements, avoiding over-promising, and limiting downside risk through warranty and liability limitation clauses, among others.

Chapter

01

Concepts of Contracts



Important Concepts about
project contracts





Contracts as Private Law

Contracts create “private law” between two parties. Courts enforce valid contracts in order to provide predictability in private relationships and to facilitate commerce. Enforceability is a double-edged sword though, rarely distinguishing between good deals and bad.



Contract Formation

A contract is formed when there is “mutual assent” (also known as a "meeting of the minds") between two parties to enter into an agreement supported by “consideration” (money or something else given in exchange).



Mutual assent

Mutual assent means that two parties over the age of “majority” (18 years) and of sound mind have voluntarily agreed to enter into an agreement under which each will do or provide certain things. Where fraud or duress is used to convince a party (i.e., gunpoint) to enter into an agreement, the requirement of voluntary assent is absent and the contract can be voided.



Mutual assent

Interestingly, most contracts involving minors can be voided, but minors are generally not permitted to “disaffirm” contracts involving “necessities” like food, clothing and shelter. Mutual assent can also be undermined by mutual mistake about a material fact or assumption, as discussed below under Parol Evidence Rule.



Authority

Another concept falling under “assent” is “authority” – the question of whether the individual signing for a party is actually authorized to enter into it on behalf of that party. Or, alternatively, has the other party held that person out as having such authority?



Authority

This should not be a concern where you are dealing directly with the president, chief financial officer, general counsel or sole proprietor of a company. But an unusually generous deal signed by a sales person or business development vice president, for example, might later be disputed as “unauthorized.”



Authority

For any contract involving substantial risks, commitments or monetary value, consider demanding proof of actual authority. In the case of corporations or partnerships, this may involve requiring the other side to produce board resolutions, partnership operating agreements, or delegations of authority outlining the signing authorities of persons in certain positions.



Consideration

Each party has to agree to do or give something of value in exchange for the performance of the other party. If one party is not obligated to do or give anything of value, or their performance is otherwise voluntary or “illusory,” there is no enforceable contract under law and either party may back out.



Consideration

Courts in most Countries will not set aside a contract unless the “inadequacy” of one party’s consideration “is so gross as to be conclusive evidence of fraud and as to shock the conscience of the court.” Cases where consideration is found to be wanting also usually involve other grounds for invalidation, such as fraud or duress.



Consideration

It should be obvious from the above that gifts without consideration from the other party cannot be enforced under contract law. Companies that fail to get proper intellectual property assignments at the time of hiring employees or contractors often stumble on this concept when they later try to get departed employees and independent contractors to sign intellectual property assignment forms without offering any consideration. Any such forms signed without some form of compensation are subject to being later disaffirmed by the former employee or contractor as unenforceable gifts.

Chapter
01

Roles and responsibilities



*Roles and responsibilities of
project manager/
administrator and team leader*





Though many times the contracts are simple and straight, they are more complex. It happens to be in larger projects as many procurements and suppliers are involved.

No organization has all the skills required to do anything but the most simple of projects. Additional skills required for the completion of projects must be bought in from external sources. In this chapter, we consider the roles required throughout the project supply chain, and what contract types are available to provide the additional roles in different ways.



Project Manager

Project Manager is the person who leads the team that is responsible for achieving the project objectives. The performing organization assigns a Project Manager.

Based on the authority level, the project manager performs numerous roles. Many organizations based on the project size and complexity, assign 'a contract project manager.' A contract project manager's role is significantly different from the Project Manager



Contract Manager

The Contract Project Manager (also referred to as Contract Manager) plays a very critical role for an organization. He/she manages contracts throughout the projects and their life cycle. On many occasions, they also play the role of a Liaoning person between the companies, employees, vendors, customers. He/she creates the contract's repository and is solely responsible for maintaining all the contractual records. The company uses these records for their projects, which finally become part of Record Management.



Contract Manager

- A Liaoning person and a contract facilitator.
- Manage and close the contracts throughout the project duration.
- Create a contract repository and update periodically.
- Draft, develop, negotiate and execute the contract.
- Create policies and procedures to the contract and ensure the effectiveness.



Contract Administrator

The Contracts Administrator must ensure the following interface duties are carried out without fail.

- With Document Control for submittals, transmittals and correspondences
- With Project Control for Schedule Approval, Check Estimates, Budget trends and Forecasts
- With Project Accounting for Invoices and Back charges.
- With Quality Assurance on Quality Plans and Audits.



Contract Administrator

The Contracts Administrator must ensure the following interface duties are carried out without fail.

- With Procurement for status of Owner or Contractor Furnished Materials and Equipment.
- With Construction for Daily Reports, Change Notices, Change Directive and Method statement submittals
- With reviewing Contract issues that affect the Contract
- With Environmental Safety and Health on Safety Program Submittals

Chapter

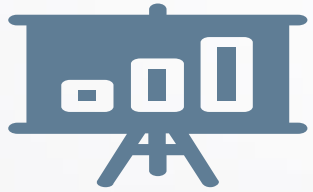
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Project Procurement



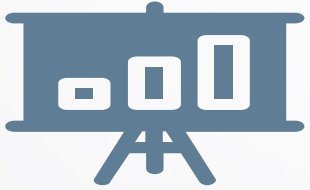
Relationship between Contract
management and procurement
department





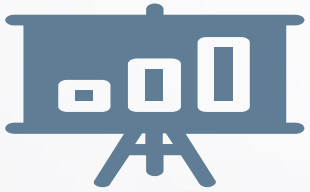
Contract management in procurement

Earlier, procurement wasn't seen as a separate function. It was considered a part of the role called purchasing where a company buys products/services from a supplier. However, companies have realized the significance of procurement in enhancing overall business performance and profitability. The procurement teams are supposed to build long-term relationships with the suppliers for mutually beneficial outcomes.



Contract management in procurement

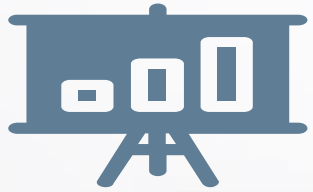
Business relationships will be simpler and more transparent when all the transactions are supported by efficient contract management. The procurement team must have the right contract management strategy to attain the goals without any obstacles.



Contract management in procurement

Improves business functioning

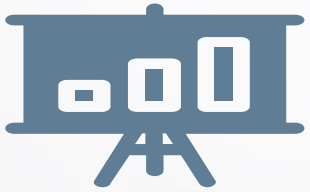
Efficient contract management will improve business functioning by identifying the needs, implementing the strategies to fulfill the requirements and analyzing if the objectives of the organizations are met.



Contract management in procurement

Controls spending

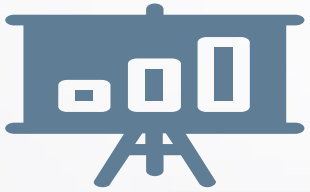
Contracts provide better spend visibility and help organizations to monitor financial transactions. With this, organizations can also identify maverick spending and opportunities for cost savings in the future.



Contract management in procurement

Helps in evaluating suppliers

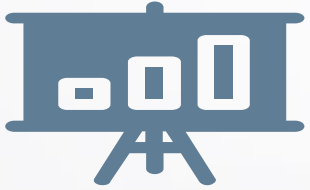
The procurement team must constantly monitor the suppliers and their performance to evaluate the supplier risk. Contract management will help them to ensure if the suppliers are abiding by the criteria and build long-term relationships with them.



Contract management in procurement

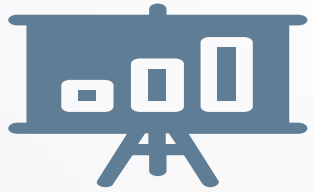
Ensures compliance

The organizations that have an efficient contract management strategy in place can mitigate risks to a great extent. When there are written rules and procedures, it will be easier to ensure compliance.



The role of procurement in Contract management

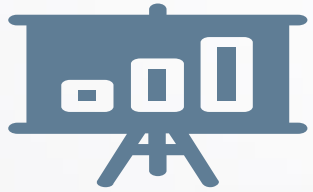
Procurement today is supposed to be a management function within an organization, directly supporting the strategic goals of the organization. However, this is yet to be achieved in most organizations. In most cases, contract management is left to the legal department team members. However, the team may not have all the required technical knowledge to carry out the work properly, especially when an organization runs a long and complex supply chain.



Contract management in procurement

Standardizing Contract Creation

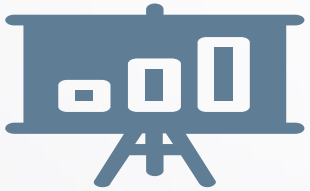
The procurement team should be involved in coming up with a standard way to draw contracts with vendors and suppliers. Each organization should have terms, conditions, and technical language that are used in its contracts. Procurement team members should help the legal team in discussions about common terms and conditions in the industry. They can also give input on what the impact of setting certain conditions will be or how best to protect the interests of the company in contracts with suppliers.



Contract management in procurement

Setting Contract KPIs

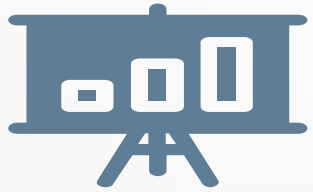
Big organizations will have complex supply chains, sometimes spread across continents. The key performance indicators will differ depending on goods and services. The procurement team must therefore be involved in coming up with yardsticks to determine the best way to evaluate suppliers of each item or service.



Contract management in procurement

Setting Contract KPIs

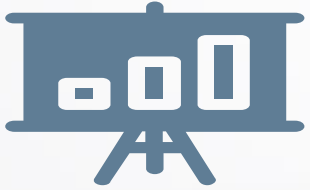
Procurement team members interact with suppliers and they know their reliability. They can advise management on whether the terms inserted into a contract are realistic and how they will affect relationships with vendors. A company also needs to decide on how to go about collecting data to assess supplier performance. The data collection strategy should be affordable and easy to understand.



Contract management in procurement

Finding Saving opportunities

The procurement team should be continually involved in evaluating supplier contracts to ensure they are aligned with the overall objectives of the company. They should be on the lookout for new opportunities to reduce costs. For instance, giving a vendor a longer contract might lead to a more favorable price per unit. Ordering larger quantities could also help minimize costs without necessarily leading to overstocking.



Contract management in procurement

Finding Saving opportunities

Sometimes the company may be paying for items or services they no longer need. This happens a lot in big organizations. The procurement team should be involved in assessing the value of everything the organization is paying for. Should demand a particular product decrease, the team should be able to integrate such a trend into the overall procurement strategy.



Thank You