

# CITYWIDE CONTRACT TRAINING

Presented By:

Office of the City Attorney

Comptroller's Office – Purchasing

Affirmative Action Division – DCR

City Clerk

May 21-22, 2008

# Topics for Today

- ◆ Nature and Importance of Contracts
- ◆ Choosing Your Contract
- ◆ Contract Authorization – MGO Sec. 4.26
- ◆ APMs Governing Contracts & Purchasing
- ◆ Purchasing Division and Procedures
- ◆ Purchase of Service “POS” Contract Form
- ◆ Public Works and Other Special Contracts

# Topics, cont.

- ◆ Execution of Contracts
- ◆ Role of DCR, Comptroller, Clerk
- ◆ Contract Routing and Database
- ◆ Practical Tips
- ◆ Questions (Always Welcome!)
- ◆ NOTE: May be some repetition.

# Nature and Importance of Contracts

## ◆ What is a Contract?

- "An agreement, upon sufficient consideration, to do or not to do a particular thing."
- "A promissory agreement between two or more persons that creates, modifies or destroys a legal relation."
- Black's Law Dictionary.

# Nature and Importance of Contracts, cont.

- ◆ Traditional elements of a contract:
  - *Offer*: A proposal from one party or parties.
  - *Acceptance*: Agreement to the proposal by the other party or parties.
  - *Consideration*: Something of value passing between the parties; courts now accept mutual promises as consideration.

# Nature and Importance of Contracts, cont.

- ◆ Contracts define the legal obligations and duties of the parties.
- ◆ Contracts define the rights of the parties in the event of a breach of contract.
- ◆ Entire legal codes exist to define contractual relationships, e.g., the Uniform Commercial Code.

# Nature and Importance of Contracts, cont.

- ◆ The more clarity in a written contract, the fewer disputes.
- ◆ The more contingencies that can be covered in a written contract, the fewer disputes.
- ◆ NO CONTRACT is ever completely clear or covers all contingencies.

Questions?

# Choosing Your Contract

## ◆ Plan Ahead!

## ◆ Ask critical questions:

- *What* do you want to accomplish?
- *When* do you want to do it?
- *Who* are the parties? (NOTE: The City of Madison, not an individual department, is the party 99.44% of the time).
- Who will *sign* the contract? (NOTE: 99.44% of the time, the person who signs is NOT YOU or your department head!!)

# Choosing Your Contract, cont.

## ◆ Ask Critical Questions:

- Is a Council resolution needed?
- When would you like the contract to start?
  - ◆ Work backwards from this date to figure out...
- How much time do I need?
- Will one of the standard form contracts work?
- What is the Scope of Services, & who will write it?

# Choosing Your Contract, cont.

## ◆ Types of Standard Contracts:

- Some available on EmployeeNet, under "Forms:"
  - ◆ POS, POS-Architect, POS-Design Prof
  - ◆ Public Works boilerplates
  - ◆ "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

# Choosing Your Contract, cont.

- ◆ Other approved contract forms in-use:
  - Community Services, NPG, Arts Grants, CDBG, Subdivision/Developer, standard public works, other Planning
  - These contracts need authorization (resolution) and usually do not go through Purchasing.
  - See handout in binder for full list of approved contract forms

# Choosing Your Contract, cont.

- ◆ Common contract forms, not generated by the City:
  - Grant agreements with County, State (DOT, DOJ) or US Govt (FTA, HUD)
  - Highway Improvement Project, other agreements w/ WisDOT
  - Q: Any others that your dept handles?

# Choosing Your Contract, cont.

## ◆ Non-standard Contracts:

(Any contract not on the list in your binder)

- Involve City Attorney as early as possible.
- Memorandum of Understanding (MOU).
- New Grant Agreements
- Intergovernmental Agreements (IGA)
- Anything else, especially if other party sends YOU their "standard" contract.

# Choosing Your Contract, cont.

## ◆ Special Contracts Not Covered Today

We will not focus on these today:

- Public Works Contracts: detailed forms and standard specifications approved by BPW
- Secs. 62.15 and 66.0903, Wis. Stats. and Sec. 33.07(7), MGO.
- Very detailed bidding and contract requirements, standard specs, bond forms.

# Choosing Your Contract, cont.

## ◆ Unusual Entities:

- CDA and MCAD (Overture) are separate legal entities. They may contract on their own, but sometimes use City procedures.
- Monona Terrace has some authority to contract without using these procedures.

# Choosing Your Contract, cont.

## ◆ Unusual Entities:

- Library Board has some independence, but tends to use City procedures.
- Water Utility was more independent, but new ordinance (13.03(2), MGO) brings within 4.26.
- Public Health is joint entity, but most contracting follows City procedures. Need to consult County sometimes.

# Authorization of Contracts

- ◆ ALL Contractual Relationships must be authorized by the Common Council.
- ◆ *What do we mean by "authorized?"*
- ◆ MANY Contracts have been pre-authorized by the Council, via sec. 4.26, Madison General Ordinances.
- ◆ SOME Contracts are authorized in the annual Budget resolution.

# THE BIG POINT:

- ◆ A Municipality acts through the Common Council
- ◆ The Mayor and Clerk are the usual signers of written agreements on behalf of the City, IF authorized by the Council
- ◆ Anyone else can only sign with EXPRESS authorization from the CC...

# 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 MGO or resolution.
- ◆ The written document must contain all applicable, mandatory City contract terms.
- ◆ The written document must be signed by a person who is authorized to do so.
- ◆ SEE APM 1-1 as your first resource!!

# So, who is authorized?

- ◆ Depends on the type of contract.
- ◆ Goods & services = most common and the focus of this training program
- ◆ MGO 4.26 covers goods and services
- ◆ Other contracts, agreements, leases, IGAs, cooperative agreements, are likely going to need Council approval...

# MGO 4.26 = Goods & Services

- ◆ Sec. 4.26, MGO, is the mother of all authorizations.
- ◆ Revised December, 2006 (replaced MGO 3.61)
- ◆ Describes when Purchasing Agent can bind the city to a contractual relationship, and when you need council approval.
- ◆ Also tells you who is allowed to sign.
- ◆ See bottom of signature page on POS contract.

# Overview of Sec. 4.26

◆ Contracts that you can sign = None

◆ Purchases that you can make yourself:

- Supplies, equipment, goods and materials under a certain \$ limit, if included in your budget.
- P-Card or LPO use for everyday items.
- Details to be given later in this training...

◆ Use City Purchasing for anything (goods or services) over \$5,000.

# Overview of Sec. 4.26, cont.

- ◆ The Purchasing Agent Can Sign Contracts for goods/services:
  - What are goods? (no dollar limit for goods) 4.26(2)
  - What is considered a service? 4.26(3)
  - Purchase of goods that includes maintenance services = treated as goods only

# Authorization of Contracts – Overview of Sec. 4.26, cont.

## ◆ What can the Purchasing Agent sign?

- Contract for goods, services or both.
- Money in your budget.
- Contract form approved by OCA.
- Complies with other applicable laws.
- Competitive Selection process used/approved by Purchasing Agent.

*See next page for the important stuff...*

# 4.26 overview, cont.

## ◆ What Can Purchasing Agent sign? cont.

- 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 form, bottom of last page, for a cheat sheet for what Randy can sign*
- Questions about Purchasing Agent's Authority?

# Overview of 4.26, cont'd

## ◆ Competitive Selection Process

- 4.26(3)(b) gives comptroller authority to “bless” the competitive process used, or not.
- Methods include:
  - ◆ RFP
  - ◆ Piggybacking
  - ◆ Details providing in Purchasing’s presentation

# Overview of 4.26, cont.

- ◆ Exceptions to competitive process: 4.26(4)(a)
  - Emergencies.
  - Only one source ("sole source")
  - Attorneys.
  - Educational institution.
  - Fees established by law.
  - Using same consultant provides economies to the City.
  - \$25,000 or less.
  - "otherwise authorized"

# Overview of Sec. 4.26, cont.

- ◆ Exceptions to competitive selection process:
  - If over \$25,000 and no competitive process, can't contract w/o Council resolution. 4.26(4)(b)
  - The Common Council's resolution must:
    - Approve your selected "sole source" contractor, by name
    - Make reference to the specific exception in 4.26(4)(a) that you used to bypass the competitive process
    - And authorize the Mayor and Clerk to sign the contract.
  - ◆ See Sample Resolutions in your binder (Bentley Systems, AT & T.)

# Overview of 4.26, cont.

- ◆ Execution of Contracts under 4.26
- ◆ The 2<sup>nd</sup> half of the “authorization” question... who signs the contract?
- ◆ Hopefully by now you have a good idea:
  - who are the “default” signers for the city?
  - Who can sign a service contract for up to 3 years?
  - What if a competitive process was not used, and it's more than \$25,000?
  - Can anyone else sign? Why or why not?

## 4.26 Wrap Up:

- ◆ Questions about 4.26?
- ◆ Purchasing staff will now give a talk on their procedures, including how to utilize 4.26.
- ◆ Take home message = 4.26 is very helpful for purchase of goods and services.
- ◆ Default = get council resolution, Mayor and Clerk sign.

# Purchasing & Comptroller's

## ◆ Contract Forms

- Requisition and PO
- Contract for Purchase of Services
- Vendor Agreements and Contracts
- Who can sign and issue Contracts

# Purchasing & Comptroller's

## ◆ Goods and Services Distinctions

- Goods – Supplies, Equipment
- Services – Consulting, Maintenance
- Maintenance Contracts – Goods or Service?

# Purchasing & Comptroller's

## ◆ Competitive Process

- < \$5,000 – Best Judgment
- \$5,000-\$25,000 3 Written Quotes
- >\$25,000 Formal Bid or RFP
- State Contracts
- Sole Source Justification

# Purchasing & Comptroller's

- ◆ Contracts needing Council Approval
  - Budget Amendments
  - Service Contracts > 3 years
  - Service Contracts 1-3 years and >\$50,000 per year
  - Sole Source Justification on Service Contracts and > \$25,000

# Purchasing & Comptroller's

## ◆ Approving Resolutions

- Verifying Budget
- Verifying Account Strings
- Encumber Funds

# Purchasing and Comptroller

- ◆ 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.

# Affirmative Action Contract Compliance Programs

Affirmative Action Division  
Department of Civil Rights  
City of Madison, Wisconsin

# What is Contract Compliance?

Organizations doing business with the City must comply with laws and regulations requiring:

- Payment of fair wages (Living & Prevailing)
- Nondiscrimination and anti-harassment policies in hiring and employment
- Utilization of minority, women-owned, small, and disadvantaged businesses for subcontracting opportunities

This is based on the underlying principle that employment and contracting opportunities generated by City dollars should be available to all on an equitable and fair basis.

# When is Contract Compliance required?

- ◆ Most City contracts are covered
- ◆ All covered City contracts are reviewed
- ◆ Compliance requirements are based on the nature and terms of the contract
- ◆ Other City agencies spend the \$ - we ensure that the contractor is accountable for the \$ spent

# Who is covered by Contract Compliance?

- ◆ Organizations doing business with the City of Madison
- ◆ Organizations attempting to do business with the City of Madison
- ◆ Employees of organizations doing business with the City of Madison
- ◆ Individuals attempting to become employees of organizations doing business with the City of Madison

# How is Contract Compliance applied?

- ◆ Labor Compliance
- ◆ Wage Compliance
- ◆ Targeted Business Compliance

Labor Compliance	Wage Compliance	Targeted Business Enterprise Programs
<p>[MGO 3.58]</p>	<p>[MGO 4.20 and 23.01]</p>	<p>[MGO 3.58; 49 CFR Part 26, 24 CFR 84.44(b), 24 CFR 85.36(e), and the City of Madison SBE Program]</p>
<ul style="list-style-type: none"> <li>• <b>Contract Review</b> <ul style="list-style-type: none"> <li>• Non-Discrimination</li> <li>• Stats &amp; Job Vacancies</li> <li>• Articles of Agreement</li> </ul> </li> <li>• <b>Payment Review (&gt;\$25K)</b></li> <li>• <u>Affirmative Action Plans</u></li> <li>• Workforce Analysis &amp; Goals</li> <li>• Good Faith Effort</li> <li>• Prequalification of Bidders</li> <li>• Articles of Agreement</li> <li>• <u>Monthly Employee Utilization Reports</u></li> <li>• Compliance Reviews</li> <li>• Desk and On-Site Audits</li> <li>• Complaint/Dispute Investigations</li> <li>• Conciliation Process</li> <li>• <u>Job Skills Bank &amp; referrals</u></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Contract Review</b></li> <li>• <u>Weekly Payroll Reports</u></li> <li>• <b>On-Site Reviews</b></li> <li>• Employee Interviews</li> <li>• Complaint/Dispute Investigations</li> <li>• <u>Workforce Profile</u></li> <li>• <b>Prevailing Wage Rate Scale</b></li> <li>• Prevailing Wage Violations</li> <li>• Back Pay</li> <li>• Payment Approval/Withholding</li> <li>• Partial and Final Payments</li> <li>• Retainage</li> <li>• <u>Affidavits of Compliance (Prime or Sub)</u></li> <li>• <u>Living Wage language</u></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Disadvantaged, Minority-owned, Small, and Women-owned Business Enterprises (DBE/MBE/SBE/WBE)</b></li> <li>• Eligibility Requirements</li> <li>• Complaint/Dispute Investigations</li> <li>• Subcontractor Listing</li> <li>• <b>Goal setting and Goal Achievement</b></li> <li>• <u>Good Faith Effort</u></li> <li>• <u>Compliance Reports</u></li> <li>• Subcontracts (executed)</li> <li>• Verification of (prompt) payment</li> <li>• Approval and Withholding of Payment</li> <li>• <b>Directories</b></li> <li>• <b>Pre-Bid and Pre-construction Meetings</b></li> </ul>

# Anything Else?

- ◆ Engage us **early**
- ◆ Keep us in the loop (cc)
- ◆ Advise potential vendors/contractors of terms and conditions
- ◆ More information available online [DCR - Affirmative Action Division](#)

# Clerk's Office and Contract Routing

- ◆ Contract Routing Procedures
- ◆ Contract Routing Database
- ◆ Forms

# Practical Tips

- ◆ Or, “How To Get the Most Out of Purchasing and Attorneys Without All of Us Going Crazy”
- ◆ Plan Ahead.
- ◆ Plan Ahead !!
- ◆ Did I mention to Plan Ahead??!?!?

# Practical Tips, cont.

## ◆ OCA “Contract Drafting Request Form”

- 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. If so, check with your supervisor, Purchasing or Attorney ASAP!
- Form is in your binder, coming to EmployeeNet soon.

# You say you want a Resolution?

- ◆ Anyone can draft a resolution
- ◆ Alder or Mayor must sponsor
- ◆ Resolution must give who, what, when, and how much money
- ◆ 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 (in binder: Waste Mgmt., Schmidt's towing)

- 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 (Bentley Systems, AT&T)
  - 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.

# Practical Tips – Scope of Services

- ◆ The department is responsible for preparing 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’s contract administrator 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. Really.
  - “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.
- ◆ See binder for sample Paragraph 3 language

# Tips – Mandatory Contract Provisions

- ◆ Make all prospective contractors aware of the city's Mandatory Provisions...
  - 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 applicable form contract *before* you agree to any sort of contractual relationship.
  - Tell contractor the 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
- ◆ Anti Sweat Shop 4.25
- ◆ Living Wage 4.20
- ◆ Disability Assurances (contracts for financial assistance only) 39.05
- ◆ Indemnification and Insurance APM 1-1
- ◆ *How do I deal with these?*

# Practical Tips, cont.

## ◆ Miscellaneous issues:

- What to do with Form Contracts from other side.
- Contracts using Grant Funds – know your Grant. Don't forget the mandatory grant conditions.
- Unique contracts (not goods or services) IGAs, MOUs, etc. Bring in City Attorney at the very beginning. You cannot do this soon enough!
- Don't bargain away your position if you know the other side has a problem with our contract terms...

# Practical Tips - Avoiding Delay

- ◆ Avoid surprises and delay!!
- ◆ You're on the right track if you follow the points of today's training:
  - Determine what authorization is needed
  - Use appropriate competitive selection process
  - Choose right form contract & show it to contractor
  - 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 management, DCR, Clerk)
- Avoid delays in ROUTING by putting your contract packets together correctly
  - ◆ Info TBA from City Clerk and City Attorney Paralegal

# 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.

# Post-contract issues:

## How do I...

- ◆ *Terminate* a contract?
  - ◆ *Renew* a contract?
  - ◆ Change or *Amend* a contract?
  - ◆ *Add* something to a form contract?
- 
- ◆ Vocabulary quiz: expire, terminate, renew, extend, amend
  - ◆ Amendment vs. Addendum

# Conclusion

- ◆ Contracts can make your job easier, or can add headaches.
- ◆ Plan Ahead!
- ◆ Questions?

# Thank You !

- ◆ Office of the City Attorney (City Attorney Michael P. May and Assistant City Attorney Lara Mainella)
- ◆ Comptroller's Office, Purchasing Division (Randy Whitehead and Monette McGuire)
- ◆ Affirmative Action Division (Norman Davis)
- ◆ City Clerk (Maribeth Witzel-Behl)