

Contract Basics for Project Managers

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Nothing in this presentation constitutes legal advice or the formation of an attorney-client relationship.

PMBOK Framework

- Process Group: Controlling
- Knowledge Area: Risk Management

Contract Basics?

- Contract Formation
- **Dispute Avoidance & Resolution Tool**
- Agency Relationships
- Alternative Dispute Resolution

Legal Review

- Eliminate poorly drafted/ambiguous provisions
- Make sure a contract is enforceable
- Ask objective “what ifs . . .?”

Enforceable

- In order to be an aid to resolving or avoiding disputes . . .
 - In writing;
 - Between parties competent to contract;
 - **Include appropriate terms;**
 - Require consideration;
 - Be for a legal purpose; and
 - Consent (No fraud, duress, etc.)

In Writing

- Plain English is today's standard

"Good Contract"

- Parties
- Effective date and terms
- Scope of work
- Pricing & contingencies
- Performance standards
- Warranty(ies)
- Remedies (including dispute resolution process)
- Risk allocation
- "Boilerplate"
- Signatures – *important!*

Job # 1

- Read the entire contract
- Expose/Note any ambiguous language
- Be familiar with the terms and provisions in the contract

Terms Often Causing Disputes

- Scope of work
 - Pricing & contingencies
 - Performance standards
 - Warranties / Post-contract obligations
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- ★ Use Exhibits – You can add later (modify contracts)
 - ★ Incorporate by reference into the contract

Provisions Needing Special Attention

- Non-compete agreements
 - Must be properly limited
- Confidentiality/non-disclosure agreements
 - Information must really be “confidential”
- Guarantees
 - What, specifically, is being guaranteed
 - When does guarantee start
 - Etc.

Action Plan?

#1 - Communicate

Always going to be disputes about interpretation:

“Oh you meant . . .” once performance has been initiated

PM's first line of defense:

Create and maintain open & frank channels of communication

2 – Document Changes

- Use of WRITTEN Change Orders → Document Change(s) in Scope
 - Anticipate needed changes (you've read the contract!)
 - Before costs get out of hand and both parties have a larger stake in defending their respective positions.

3 – Document Adjustments

- “Waiver” Handle as a Change Order
e.g. Slipped delivery dates suddenly become “do or die” or other related provisions are not “adjusted” the same way

4 – Don't Depend on "Outs"

- One-sided language / "Saving clauses"
 - The legal question is "what was the intent of the parties at the time of contract signing?"
 - The predictable response from the other party will be that it never intended to be bound under that interpretation.
- Make adverse implications to a party explicit in the contract

In Closing: Avoid Contract Disputes By . . .

- Legal review
- Understanding the contract terms → Read it!
- Open & frank communication start to finish
- Be on the look out for problematic provisions
- Understand that even if you are primarily an administrator of a contract – terms may be modified (if done correctly)

Start to see contracts as “working documents” that should be helpful to successful project completion

QUESTIONS?

Thank You!

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