



**Service Contracting**  
M Taylor, C.P.M.



October 2011

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**Legal Disclaimer**

- I promise never to be a lawyer
- I promise never to talk like a lawyer
- I promise never to act like a lawyer
- I promise never to dress like a lawyer
- I promise never to be a lawyer
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**It's Not Rocket Science**

- **Statements of Work SOW**
  - ✓ in lieu of a specification or drawing
- **Invoicing and payment schedules**
  - ✓ in lieu of an FOB point
- **Acceptance criteria**
  - ✓ in lieu of a QA inspection plan
- **Closeout processes**
  - ✓ in lieu of a delivery receipt
- **Personnel requirements and qualifications**
  - ✓ in lieu of a product catalog

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## SOW -Writing Tips

1. The "Statement of Work" must completely describe what you want
2. Do not mix SOW requirements with administrative requirements
  - Start with bullets – and an outline
  - Keep asking "what if" and adding bullets
  - Write full paragraphs as a last step
  - Say what you mean, don't write fancy
  - Web search for templates & examples

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## SOW -example

- |  |   |
|--|---|
| <input type="checkbox"/> Background                          | <input type="checkbox"/> Travel                                       |
| <input type="checkbox"/> Objectives                          | <input type="checkbox"/> Special Material Requirements                |
| <input type="checkbox"/> Scope                               | <input type="checkbox"/> Other Unique Requirements and Considerations |
| <input type="checkbox"/> Tasks                               | <input type="checkbox"/> Place of performance                         |
| <input type="checkbox"/> Delivery                            | <input type="checkbox"/> Period of performance                        |
| <input type="checkbox"/> Government-Furnished Property (GFP) | <input type="checkbox"/> Invoicing & Payment                          |
| <input type="checkbox"/> Security Considerations             |   |

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## Basic Concepts

- Description
  - ✓ What exactly do I want the contractor to do? Or not?
- Delivery
  - ✓ Who, when, where?
- Acceptance
  - ✓ How will I decide I got what I wanted? How "good" is "good"?
- Payment
  - ✓ How will I pay for the service? All at once? Or multiple payments
- On-site work & contractor personnel
  - ✓ Any additional controls, limitations or issues?

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## Types of Contracts

customer assumes risk

contractor assumes risk

- CPPF: cost plus percentage fee
- CPFF: cost plus fixed fee
- CPIF: cost plus incentive fee
- FPE: fixed price with escalation
- FFP: firm fixed price

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## Profit

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## Contract Type = Labor Hour

- Pay each work hour (per person/per team?)
- Advantages,
  - ✓ Undefined SOW = more/less work as directed
- Risks,
  - ✓ Pay as many as it takes
- Estimated hours and incentive
  - ✓ For every hour early 1/2 of the saving
  - ✓ For every hour late, 75% of the rate

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# Labor Standards dol.gov

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**DANGER HARD HAT AREA**

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# Request for Proposal

- Get a price breakdown for everything
  - ✓ Prepare to renegotiate, adds, deletes, changes, corrections, omissions
- Get a detailed schedule
  - ✓ Track mobilization, progress, completion
- Get a detailed proposal (who, how, what)
  - ✓ To demonstrate understanding and capability
  - ✓ To ensure you are buying what you want

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**DANGER HARD HAT AREA**

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# Contractor Selection

What do we want to know about the contractor before we make a selection?

*Your proposal must include:  
evidence of experience & capability,  
itemized schedule,  
key personnel*

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**DANGER HARD HAT AREA**

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## Selection Criteria

- Qualifications, experience, trained and effective staff, capability, project plan, equipment, availability & then price

**NOT ALL SERVICE CONTRACTORS ARE CREATED EQUAL**

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Cheap

## Mike's Lawn Mowing Service



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## Independent Contractor

Nothing in this Contract shall be deemed to represent that Contractor or any of the Contractor's employees or agents, are the agents, representatives or employees of Buyer

- Co-employment
- Wages & Taxes
- Working Conditions
- Worker Qualification
- Legal Employees

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## Food For Thought

- Repairman steals company secrets
- Janitor sexually harasses our secretary
- A/C repairman electrocutes our maintenance manager
- Painter falls and dies
- Workers are found to be illegal aliens
- Temp clerk hides controlled substances in our file cabinet

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## Contractor Personnel (& Subs)

Any employee of Contractor deemed by Buyer, in their sole judgment, to be objectionable shall be removed from the jobsite immediately upon Buyer request.  
*Replacement Required?*

- Professional
  - Trained
  - Competent
- Not:**
- Abusing Controlled Substances
  - Disruptive
  - Criminal

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## Contractor Personnel

- I-9 & E-verify
- Background investigations
- Uniforms
- Training
- Qualifications, certifications
- Labor agreements
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## Employee Identify

### ➤ I-9, Employment Eligibility Verification

- All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. On the form, the employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9. The list of acceptable documents can be found on the last page of the form.
- **E-Verify and Form I-9** [www.dhs.gov/e-verify](http://www.dhs.gov/e-verify)
- **Form I-9** is the core of **E-Verify**. E-Verify is an Internet-based system that compares information from the Form I-9 to government records to confirm that an employee is authorized to work in the United States.

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## Pitfalls

- We contracted with a contractor
- We pay the contractor for performance
- We grant the contractor access to use acceptable personnel to perform the contract
- We did **not** hire people
- We are **not** paying contractor personnel
- We are **not** interfering with contractor's employer-employee relationship

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## Issues *(just a few)*

- Scope of Work
- Time for Performance
- Delays
- Submittals
- Acceptance
- Invoicing
- Payment
- Liens
- Technical Direction
- Key Personnel
- Liability & Accountability
- Access restrictions
- Independent Contractor
- Training & Qualification

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# UCC – Does Not Apply

- What are we missing (that we care about)
- Missing Terms
- Warranty of merchantability
- Statute of Frauds
- Right to Cover
- Specific Performance

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# Time IS Of The Essence

*Time is of the essence in performance of this contract. Delivery of the services in accordance with the terms of this agreement is of significant importance to the Buyer. Failure to complete all work before the completion date called for in this contract will be considered a material failure of contractor performance.*

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# Contract Clauses

Google as a professional resource....

The screenshot shows a search result for 'PURCHASING SERVICES'. It lists various contract clauses such as 'Materials List', 'Performance Guarantees', 'Warranty', 'Dispute Resolution', etc. The text is partially obscured by a sidebar on the left.

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## Language

When communicating about a contract be specific!

“...provide documentation required in section xyz....”

“...based on contractor’s failure to provide adequate assurance that contractor is in compliance with contract requirement xxx section 23, ...”

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## Payment Schedule

- Payment is tied to performance
  - ✓ Get something for your money
- Take possession, title, ownership of finished pieces
- Use payment as an incentive – What does the payment plan encourage contractor to do?
- Get release before making the payment

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## Invoice Review

- Checklist for invoice review
- Reject inaccurate or incomplete invoices

Your invoice number x received on y date for contract z is inaccurate and unacceptable for the reasons identified below. Accordingly it is herein being returned. You are advised that the invoice payment clock will not start until an accurate invoice, which meets contract requirements is received at the designated point.

invoice discrepancies:

- 1.
- 2.
- 3.



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## Invoices Must.....

- Describe the period covered
- Work accomplished for the invoice period
- Certify that all work was performed in accordance with the contract
- Certify that all labor and materials have been paid in full and not subject to liens, encumbrances and claims

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## Invoice Review

<p><b>The Tech-Rep confirms important facts – such as:</b></p> <ul style="list-style-type: none"> <li>✓ Did we receive the service we contracted for?</li> <li>✓ Were the personnel identified and hours spent actually in performance of this contract?</li> <li>✓ Is the period of time the invoice covers the actual period of time that the charges were incurred?</li> </ul> <p><b>The Contract Specialist confirms facts such as:</b></p> <ul style="list-style-type: none"> <li>✓ The rates and overhead values charged are authorized in the contract.</li> <li>✓ The invoice meets contract requirements for documentation purposes.</li> <li>✓ The invoice covers the same period of time that the contract covers.</li> <li>✓ The math and calculations on the invoice are correct</li> </ul>	<ul style="list-style-type: none"> <li>✓ Use a checklist of elements to consider.</li> <li>✓ If you have a unique or specialized contract, you may find it helpful to augment the standard invoice review checklist with additional unique items.</li> <li>✓ Match invoice data elements to specific contract sections, authorizing or prescribing the action and charges.</li> <li>✓ If the invoice is unclear, does not match the contract or does not appear to be valid – raise the issue and do not approve the invoice until the problem has been resolved.</li> </ul>
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## Invoice Hazards

- Invoice is submitted for work or charges not authorized by the contract
  - ✓ *charges for training at contractor's site that were not required in the contract*
- Invoice is for charges that were incurred outside the contract period
  - ✓ *charges for equipment rental after the work was completed*
- Invoice is for work that has not been accepted, accounted for or can be verified
  - ✓ *CLTR time card for weekend work which was not authorized and cannot be verified*
- Invoice specifies the wrong contract, value(s), dates, scope, people, etc.
  - ✓ *travel expenses for people who are not assigned to the contract*

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## Final Release

In consideration of receiving the sum of \$ \_\_\_\_\_, which represents the final value of all work and services provided by the Contractor on this contract., Contractor and its successors hereby assign, release and forever discharge Buyer, its officers, agents and employees from any and all liabilities, obligations and claims in law and equity arising out of or in connection with this contract.

Failure to provide a Final Release (or satisfactory explanation for the delay) within 30 days from the transmittal date above will constitute Contractor's release of Buyer from all liabilities, obligations and claims under the referenced Contract. Contractor's silence is agreement to this notice.

By signing and submitting this release, the signor certifies that: 1) all statements herein are current and accurate and, 2) are a material and binding part of the referenced contract, and 3) signor has the authority to represent the contractor in this matter.

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## Changes

- There are many elements that can go wrong in a service contract and each change will cost \$\$\$\$. Structure the agreement to be prepared for the re-negotiation. Once a service has started the contractor will be in a very good positions to force you to pay at least something.

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# Questions/Comments?

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