



2022 OISBF

Purchasing Workshops

The Purchasing Cycle: Begin with the End in Mind

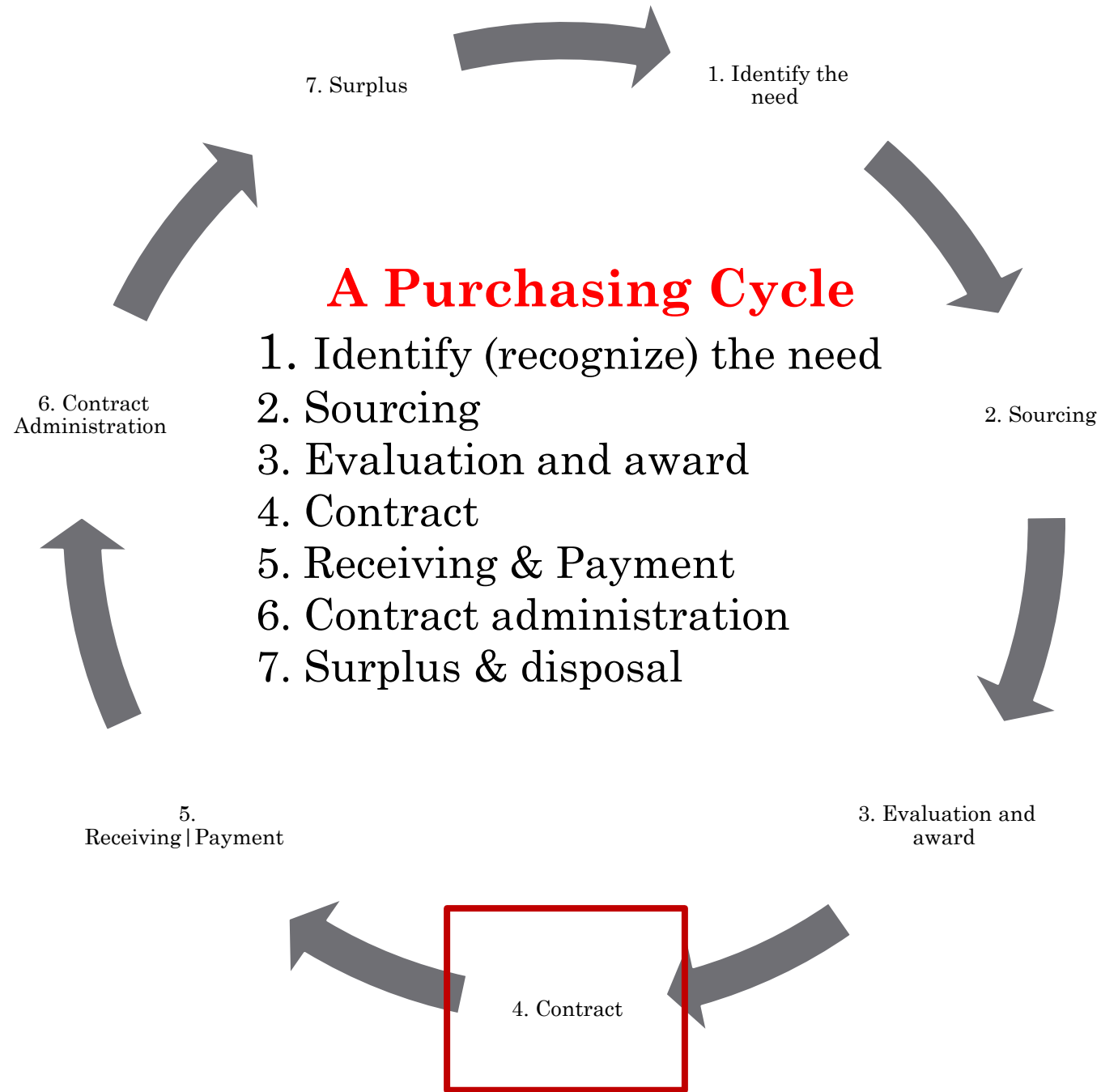
CONTRACTS

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David L. Young, NIGP-CPP, CPPB, CPO, Director of Purchasing & Supply Management

2022 Purchasing Workshops Focus

- Focus on information pertaining to a segment of the purchasing cycle
- Work through the purchasing cycle in sequential order
- Connect purchasing cycle segments to relatable school experiences, tasks, and statutory requirements
- Cover aspects of contracting as related to the purchasing cycle.



Forms of Agreement/Contract

- Written

- Supplier proposals
- Supplier quotes



- **School district's form**

- Purchase order
- Battle of the forms – conflicts with supplier's terms

- Other written & most common

- Contract – All elements of a contract
- Agreement

Memorandums and Letters of Intent

- Memorandums of Understanding
 - May not have all elements of a contract
 - Could be a non-binding unilateral agreement
 - Often used for services or in-kind exchange
 - Agreements that may not have clear consideration
- Letters of Intent
 - Intent to contract

Risk in Contracting

- Why is it important to assess risk in determining the best contract method?
- Do you think supplier evaluate their risks in doing business with the customer?
- What would be examples of supplier's risk?
- What are the procurement risks for the school district?

Assessing Risk

	Sourcing/Contract Strategy	Sourcing/Contract Strategy
High Impact (Value)	Low risk, high impact (value) <ul style="list-style-type: none"> - Pencil sharpeners - Student impact (high) - Complexity of solicitation (low) - Availability of resource – (low risk) - Contract terms & conditions <ul style="list-style-type: none"> - Purchase order - Financial obligation (low risk) 	High risk/high impact (value) <ul style="list-style-type: none"> - New student management system - Complexity of solicitation (significant) - Contract terms & conditions (high) <ul style="list-style-type: none"> - Written contract - Liability – high - Data confidentiality – high - Financial obligation – high - Public perception – high
Low Impact (Value)	Low impact (value)/low risk <ul style="list-style-type: none"> - Basketball tournament agreement - Complexity of solicitation (low) - Number students affected (low) - Financial risk (low) 	Low impact (value)/high risk Need an example...
	Low Risk	High Risk

Adapted from Peter Kraljic's Matrix: The Kraljic Portfolio Purchasing Model

Determine contract method

- Purchase order
- Agreement
 - Embedded agreements
- MOU
- Letter of Intent
- Contract

Using the Purchase Order

- Does supplier/contractor agree to accept it?
- For non-goods, e.g. services, supplier/contractor signatures may be necessary.
- Conflicting other documents may have superseding and/or prevailing language over PO terms

Purchase Order Terms

- Assumes supplier agrees to them
- Assumes there are no conflicting terms in other supplier-furnished forms, e.g. quotes, proposals or references therein.
- May not be sufficient for services, non-goods transactions
 - Why?
- Are they referenced on the PO or linked?

Purchase Order Terms¹

- The Heading
 - General terms applicability
 - Order of precedence
 - Application of the terms
 - To all procurement made with a PO
 - Describes terms change process (approvals)
- Tax Exemption information
- Acceptance of Contract
 - Conditioned upon supplier's acceptance

Purchase Order Terms¹

- Acceptance of the Contract
 - Purchase order is an offer
 - By fulfilling the order, supplier accepts the terms
 - Buyer's terms shall prevail and rule
- Amendments
 - Non-binding unless in writing
- Uniform Commercial Code
 - Oklahoma's UCC should govern

Purchase Order Terms¹

- Delivery
 - Prices must be F.O.B. destination
 - Time is of the essence
 - Justification for canceling the order
- Risk of Loss
 - Shipper and seller responsible for damage, destruction, etc. of risk prior to acceptance by buyer
- Inspection
 - Right to inspect
 - Concealed damage
 - Inspection w/in reasonable amount of time

Purchase Order Terms¹

- Patents and Copyrights
 - Seller protects buyer from patent and copyright infringement for the goods.
 - Seller indemnifies buyer
- Non-Waiver of Rights
 - Either party shall have the right to demand exact compliance.
 - Payment cannot waive this right

Purchase Order Terms¹

- SDS (MSDS)
 - Supplier must furnish SDS for all hazardous materials
- Compliance with laws
 - Statement that supplier will comply with all applicable federal, state, and local laws, regulations, rules and orders
- Governing Laws
 - Laws of the State of Oklahoma
 - Venue in your county of jurisdiction or federal court

Purchase Order Terms¹

- Payment terms
 - Permissible Net __ terms
 - State contractor's responsibility to meet requirements
 - PO number of invoices
 - Clock starts ticking when invoice received
- Warranty
 - Merchantability and Fitness for a particular purpose
 - Free from defects in materials, workmanship, and design

Purchase Order Terms

- Other clauses
 - Federal procurement
 - Non-discrimination clause
 - Termination for cause and convenience
 - Prevailing wage (Davis Bacon Act)
 - Oklahoma felony & sex offender requirements
 - Non-Kickback affidavit

Agreements and Contracts

- Seller furnished agreements will almost always favor the seller/provider.
 - Term & evergreen clauses
 - Limitations of liability (Shift the liability)
 - Indemnification (Shift the loss to buyer)
 - Warranty & Fitness Clause
 - Hold harmless (Shift responsibility to buyer)
 - Governing laws
 - Privacy policies

Term & Evergreen

- What length of contract would be the best for the supplier?
- What length of contract can the school district legally agree to?
- What is an evergreen clause?

Advice

- Read supplier-furnished agreements carefully
- Read supplier-furnished agreements carefully
- Ask questions
- Seek legal help
- Don't be afraid to read the documents
- Jump in and do it!
- Terms are negotiable

References

1 Bevis, Michael, JD, NIGP Virtual Forum 2021, *What's in the Fine Print and Why, The Class: The Meta Class*, NIGP, 2021