**Contract Negotiations and Execution – Key Tasks and Considerations**

Conducting contract negotiations with the selected vendor is a critical component to the RFP process. The review, negotiation, and execution of the contract is critical, as it will be utilized by the court, vendor, and any third parties to define and administer all components of the project and solution. Included in this document are helpful hints, key considerations, and other items to be mindful of when reviewing, negotiating, and finalizing a contract of this magnitude.

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| **Helpful Hints in preparing for Contract Negotiations** |
|  | A well-defined RFP, proposal response, evaluation notes, and documented negotiations agreed upon by the court and selected vendor will assist greatly in the preparation of the contract, as many of the components have already been defined. For example, project deliverables, project schedule, technical components, primary vendor team members, and cost breakdowns should all be clear by this point in the process.  |
|  | Identify early who be a part of contract negotiations. At a minimum, this should include the project manager, procurement lead, legal, finance, IT, and key stake holders. |
|  | Plan and prepare for a timely process which will involve multiple parties from both the court and selected vendor. |
|  | These types of contracts typically contain multiple documents or agreements which cover different aspects of the product or service. For example, the details and terms and conditions related to ongoing system maintenance will be covered in a separate support agreement. These documents are almost always prepared by the vendor. To assist in expediting the process, request all required contract documents from the successful vendor as quickly as possible.  |
|  | Allow ample time for parties involved, including legal, to review all documents in detail.  |
|  | Do not assume anything. When in doubt, clarify.  |
|  | Vague contract documents will lead to increased risk for the court, including but not limited to scope creep, unwarranted change orders, increased costs and project delays.  |
|  | The contract should be drafted in a manner in which any person, regardless of their knowledge level of the project, can gain a thorough understanding of the intent, terms, and responsibilities and expectations of the parties.  |
|  | It is imperative to remember, if it is not identified in the contract, or incorporated by reference in the contract, it does not exist. This is why assumptions should always be confirmed by the contract documents.  |

**Developing the Contract Package**

The executed contract shall include all agreements and supplemental documentation required for the successful completion of the project and beyond. Contracts for technical solutions typically contain numerous documents, which include:

1. Contract for Professional Services
2. Statement of Work (“SOW”)
3. Software License Agreement (“SLA”)
4. Software Support (Maintenance) Agreement (“SSA”)

The remainder of the document contains additional helpful hints, key considerations, and other items to be mindful of when reviewing, negotiating, and finalizing a contract of this magnitude.

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| **Contract for Professional Services** |
| This document includes a high-level summary specific to the services to be completed and identifies other documents or agreements that are included, or incorporated by reference in the contract. Further, it includes the court’s general contact terms and conditions, including but not limited to contract term, compensation, payment terms, termination clauses, governing law, and court specific policies. In addition, the RFP, including any subsequent addendums, the vendors proposal response, and any vendor supplemental terms and conditions accepted by the court should be included as exhibits. |
| **Key Considerations** |
|  | All costs for professional services as identified in the SOW should be provided at a firm fixed price. Additional items or services that may be required, should also be identified at a firm fixed price (e.g. hourly rates for “out of scope” work). Do not leave anything related to cost ambiguous, and avoid language which states the court will pay “reasonable” costs for anything.  |
|  | Consider negotiating a fixed blended hourly rate for “out of scope” professional services.  |
|  | Milestone payments tied to specified deliverables should be established with payment occurring only after the court has determined the deliverable to be accepted. Although initial product license payments are typically paid up front, payments related to professional services should not be made in advance.  |
|  | Utilize, whenever possible, the court’s defined payment terms. If this is an item to be negotiated with the vendor, consider the following: 1. Are they reasonable?
2. Are they in accordance with your entities policies?
3. Do they include interest payments and taxes?
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|  | Is there a need for subcontractors? If so, the vendor should disclose that fact, and identify any subcontractor(s) it reasonably expects to use on the project.  |
|  | How are modifications or change orders handled? Who needs to be included in the approval process? |
|  | Be mindful and review carefully any terms related to indemnification, limitation of liability, data ownership, and disputes, as these are key items which bring risk to the court.  |
|  | Upon what grounds can the contract be terminated and by who? Termination language which mitigates risk to the court should always be included. Potential options include default, failure to perform, financial insolvency of vendor, and loss of allocated budget funds to the court.  |
|  | When reviewing language related to protection of trade secrets, consider what is allowable under Ohio’s Sunshine Laws.  |

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| **Statement of Work (“SOW”)** |
| This document includes a detailed description of the project tasks and deliverables, as well as the overall project plan and payment schedule. Upon completion, the SOW should provide a roadmap for all parties to monitor and manage the project schedule, deliverables, and payments. The SOW is typically drafted by the vendor, but should be reviewed and finalized as a collaborative effort between the vendor and court.  |
| **Key Considerations** |
|  | Do not shortcut focusing on the details.  |
|  | Include a project schedule and detailed description of all tasks and deliverables for all phases of the project, including who is responsible for what.  |
|  | Identify corresponding milestone payments for deliverables.  |
|  | How is acceptance of work and/or product by the court defined?  |
|  | Review all assumptions, definitions, and acronyms in detail, ensuring that they are consistent throughout the document. Spell out acronyms at least once. |

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| **Software License Agreement (“SLA”) and Software Support (Maintenance) Agreement (“SSA”)** |
| The Software License Agreement (“SLA”) includes the license requirements and supplemental terms and conditions for the solution. The SLA is typically drafted by the vendor, but should be reviewed and finalized as a collaborative effort between the vendor and court.  The Software Support (Maintenance) Agreement (“SSA”) includes the maintenances provisions and software support services to be provided by the vendor. In general, the maintenance term will begin once the solution has been successfully implemented. The SLA is typically drafted by the vendor, but should be reviewed and finalized as a collaborative effort between the vendor and court.  |
| **Key Considerations for both the SLA and SSA** |
|  | Review all assumptions, definitions, and acronyms in detail, ensuring that they are consistent throughout the document. Spell out acronyms at least once. |
|  | How long is the initial license and support term? How are renewals, additional licenses, and subsequent rate increases handled? Avoid accepting language stating that costs will be increased annually by an unknown amount or percentage. Consider tying rate increases to a cost index, or stating that annual increases shall not exceed X%. |
|  | Under what circumstances can the agreement be terminated and by who? |
| **Additional Considerations - Software License Agreement (“SLA”)** |
|  | Is the type, cost, and number of licenses being purchased clearly specified?  |
|  | How and when can additional licenses be purchased? Can a fixed fee for future purchases be identified? |
|  | What system modules and software are covered by the licenses? Are third party software modules and included? |
|  | License fees are typically paid once the contract has been executed, then on an annual basis. For the initial purchase, if a large number of licenses are being purchased, consider negotiating the ability to split this payment amount over multiple phases.  |
| **Additional Considerations - Software Support (Maintenance) Agreement (“SSA”)** |
|  | When does the maintenance period begin? |
|  | Is it clearly stated when maintenance will be provided? For example, “Support Services will be performed during regular business hours, which are defined as 8:30 a.m. to 5:00 p.m. (Eastern Time), Monday through Friday.” |
|  | Are the annual maintenance costs throughout the life of the agreement clearly identified? |
|  | How are system revisions and updates handled? Are they included in the cost of maintenance? |
|  | Ask the vendor to specifically state “what is not included in maintenance and what may result in additional costs?” Though it may be considered redundant, this is helpful to ensure there will be no unexpected and additional future costs.  |
|  | How are the service levels being defined? Does the SSA provide a clear understanding for anyone who will be monitoring and administering it moving forward? Since service levels is an area which can cause increased risk, it is recommended that this be documented in detail, including the following: 1. Priority Level - Defines the priority of the support required at each level. For example, a “Priority Level 1” or (Urgent”) indicates that the solution is inaccessible, unavailable, creating a severe impact to the business operations of the court.
2. Response Time - Defines the amount of time the vendor has to respond to the support request by the court. The response time varies based on the priority level. For example, a response time for a Priority Level 1 may be defined as “within one hour,” while the response time for a Priority Level 4 may be defined as “within five business days.”
3. Resolution - Defines the amount of time required by the vendor to resolve the problem. Resolution times are difficult to quantify, as it will vary based on the severity and complexity of the support request. As a result, a definitive resolution time will likely not be identified.
4. Escalation – Some SSA’s will contain an escalation language describing how the support request will be escalated in the incident is not resolved within a set time, generally defines in hours or days, depending in the priority level.If determined that the court will incorporate liquidated damages into their contract, this is an area in which they could be tied to.
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