Supplier Contract Q and A

Q. What steps must I follow before entering into a Supplier Contract?

A. 1. Before you sign a contract submit the proposed Supplier Contract to the Office of Legal Services for review.

 2. Comply with competitive requirements.

 3. Be sure funding in place.

 4. Have Resolution approved.

Q. Where do I get a Supplier Contract from?

A. Call the Office of Legal Services at (216) 838-0070 or download copy from Legal Services link on website. Be sure to use most recent Supplier Contract form. <http://clevelandmetroschools.org/Page/4773>. All contracts with third party Suppliers should use the district form contract template unless there is approval by the Legal Services department to use another form.

Q. What do I need to include with the Supplier Contract?

A. 1. Identify the legal name of the Supplier

 2. State the purpose of the contract.

 3. State the date the contract is being entered into and the date it will end.

 4. If appropriate, state where the services will be performed or the goods provided.

 5. If appropriate, state how the services are to be provided.

 6. State the total amount of the contract, payment terms and funding source.

 7. Independent/Employee Contractor form and Auditor Certification.

Q. What are some reasons that the contract is not approved?

A. 1. The Supplier Contract contains the following clause or provisions.

 2. Liquidated damages/penalty clause.

 3. Attorney fees clause.

 4. Choice of law provision.

 5. Prepayment provision.

 6. After the fact contract.

**Remember the more detail provided the more likely the Supplier Contract will be approved on the first submission.**

**What is an “indemnity clause”?**

In a “Liability and Indemnification clause, you agree to assume all risk of damage: destruction, loss of theft of, any property of, you, or any third party and any injury or death in any way related to your use of the facilities. You waive all claims against the Supplier. You will hold harmless and indemnify the Supplier and its trustees officers, employees, and agents from and against any all actions, claims, cost, demands, expenses, losses and liabilities (including without limitation, attorneys’ and legal fees and other costs of defense) in any way related to the acts of omissions of you or your employees, invitees, guest or agents or breach by you of the agreement.

**Why are indemnity clause prohibited?**

An indemnification or hold harmless clause commits the contacting party to financial obligations that are generally unknown at the time the contract is made. The district has no statutory authority to promise that at some time in the future it will secure funds to pay whether liability may occur under a contract. Rather, pursuant to RC 5705.41 (D) (1), the district must certify at the time it makes a contract such a certification, the District must identify a specific dollar amount that is at risk under the contract.

**What are liquidated damages penalty causes or call clauses requiring payment of attorney fees?**

Liquidated damages clauses or penalty clauses are provisions which require of that an amount be paid as a penalty if the contract is not performed. Attorney’s fees clauses require the District to pay an unknown amount of attorney fees incurred by the Supplier’s attorney. These clauses are generally prohibited for the same reason as the indent identity clause.

**What is a choice of law provision?**

A choice of law provision indicates which state's law applies and where a case can be brought in court. Ohio law and Ohio courts are preferred. Any other state law or court will hold up approval of the Supplier contract by Legal.

**What is a prepayment provision?**

A prepayment provisions requires payment before services are performed and will only be approved in exceptional circumstances.

**What is an after the fact contract and why is it prohibited?**

And “after the fact” contract is a contract which is signed AFTER services have been performed or goods have been provided?

Since the district is spending public money there are laws in place to make sure the money is spent properly and fairly it must be spent for a public purpose in America require that certain competitive processes be followed.

There is a consequence of events which must be followed to make sure that we are spending the public's money fairly for a public purpose:

1. Form of contract approved by Legal.
2. Determination as to whether Supplier is employee or independent contractor.
3. Finance determines that funds are available to pay for the goods or services.
4. Contract authorized by the Board of Education or the CEO through the resolution process.

**What happens if a sign a contract before it is approved?**

You may be personally liable for the amount of the contract and the Supplier may not get paid.

**Why does it matter whether the Supplier is an employee or an independent contractor?**

*The following are reasons* in Federal and State law why this issue is important.

1. Ohio Ethics laws prohibit employees of a public entity from having a financial interest in a contract

2. Ohio pension laws (STRS and SERS) require that payments be paid if the nature of the job is such that the person should have been treated as a school district employee (i.e. STRS employer guidelines state: “if the duties are the same as those performed by teachers or administrators under employment contracts” STRS contributions are required.

3. Federal law prohibits employers from designating persons as independent contractors Worker misclassification can result in substantial liability for unpaid wages, and taxes, penalties and fines, among other consequences.

**How is it determined if someone is an employee or an independent contractor?**

Worker classification is determined by factors and categories established by the Internal Revenue Service.

Generally, the more control that the District has over how the work that is done, the more likely someone will be an employee and not an independent contractor. Independent contractors are responsible for the result, not how, when or where the work is done.

**In Summary, the following is the process for all Supplier contracts.**

1.    Contract is completed.

2.    Contract is sent to Legal for approval (as to form) and sent back to

       originator.

3.    A resolution is done to encumber the funds, with the supporting

       documentation (contract, proposal from Supplier, resume if

       necessary) as backup/attachments to the resolution.

4.    Once the resolution is approved and a PO generated,

       the contract is sent to the Supplier for signature

5.    After the Supplier signs the contract, the CEO/originator signs

       the contract and a completed signed copy of the contract is

       then forwarded to the Supplier.

6.    The completed signed copy of the contract is attached to the

       resolution in Workday.

**Contract the Office of Legal Services at (216) 838-0070 if you have any questions.**