



# Purchasing Contracts: The Importance of a Well-Defined Scope of Services

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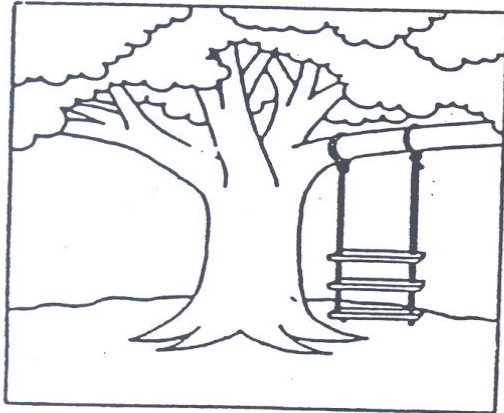
Panel Presentation by  
Lourdes Coss, Director of Purchasing  
PJ Kale, Director of Risk Management  
John Alsterda, Associate University Counsel  
Jamie Haberichter, Assistant University Counsel



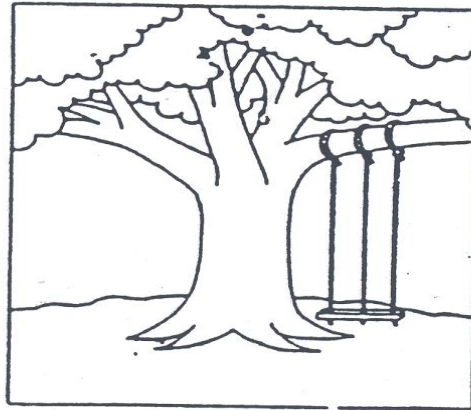
# Exercise

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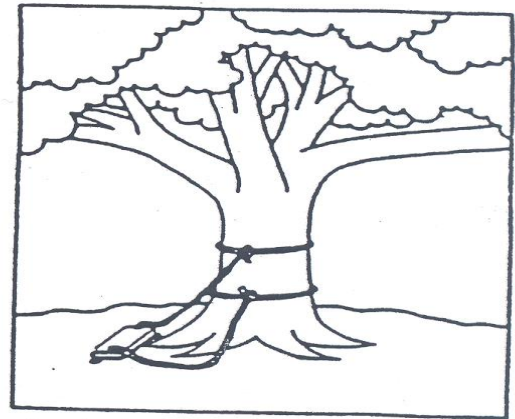
- Take 3 minutes to develop a “tree swing” specification
- Compare responses



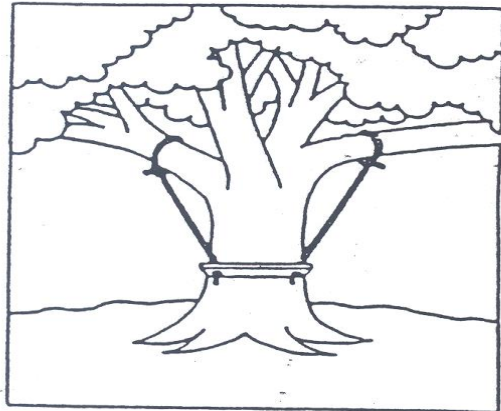
As proposed by the users.



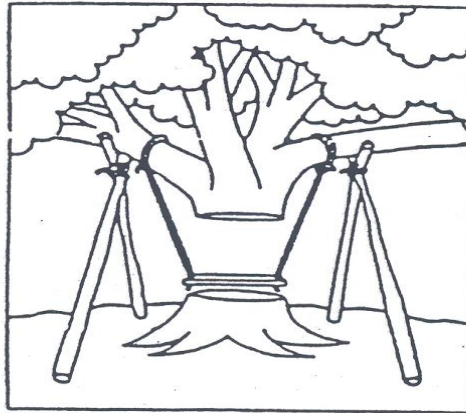
As specified on the purchase requisition.



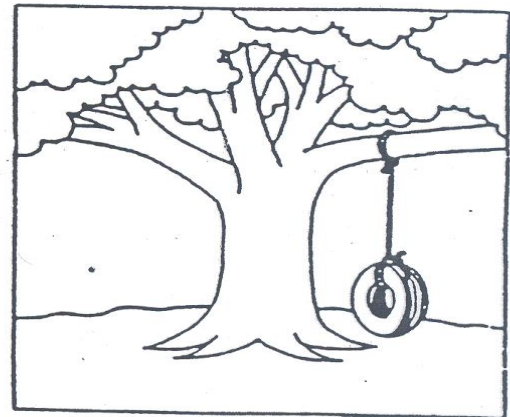
As designed by the engineer.



As produced by the manufacturer.



As ordered by purchasing



What the customer wanted.



# Objectives of the Presentation

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- To provide a clear understanding of the elements of a good scope of work and how it relates to the overall contracting process
- To provide an understanding of how a good scope of work can help Purchasing, Legal, and Risk Management departments be more effective
- To convey how a good scope of work can help you achieve your goals



# Definition of Scope of Work

Source: National Institute for Government Purchasing (NIGP)

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- A written description of the requirements for materials and services. A clearly written scope serves four main purposes:
  - Establishes clear understanding of need
  - Encourages competition
  - Satisfies a critical need
  - Obtains the best value



# Definition of Specification

Source: NIGP

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- A precise description of the physical or functional characteristics of a product, good or construction item that the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract.



# Key Concepts

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- Specifications or scope of work that describes the item or service being purchased serves to tell potential suppliers what the University wants.
- The specifications or scope of work become a part of the contract that results from the competition and establishes whether the supplier/contractor is complying with the contract requirements.
- Examples of types of contracts



# Elements of a Scope of Work

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- What – Tasks, deliverables expected
- When – Time for performance
- Where – Location, access
- How – Specific method or standard of performance
- Why – Goal of the services sought
- Who – Qualifications required to perform the services





# Importance of the Elements of the Scope of Work

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- Clear and concise description of the scope
- Specific deliverables and timeframes
- Required qualifications to perform the scope
- Acceptable standard of performance



# Risk Assessment

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- Financial Risk
  - Financial Capacity
  - Liability Insurance
  - Other Insurance
  - Indemnity
  - Surety Bond
  - Legal Remedies & Termination



# Risk Assessment (cont.)

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- Schedule Risk
  - Liquidated Damages
  - Controls
- Price Risk
  - Agreed to price
  - Terms of Payment
- Contractual Risk
  - Procedure for change orders
  - Remedies

# Responsiveness & Responsibility

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- Requirements stated on the solicitation document form the basis for the evaluation of bid/proposal responsiveness and vendor responsibility.
- Responsiveness is a legal matter
  - The bid/proposal conforms with all material requirements
  - Impact of exceptions
    - Insurance
    - Legal
    - Business
- Responsibility is a business matter
  - The vendor is fully capable of meeting the requirements of the solicitation to perform the services required. This may include: financial stability, technical expertise, and other conditions that would lead one to believe that it can successfully perform the services required.



# Elements of a Contract

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- Offer & Acceptance – process by which an agreement is reached
- Definiteness – all material terms of the agreement are stated
- Consideration – parties promise to do something that they are not legally obligated to do
- Mutuality of obligation – both parties must supply consideration to the other
- Capacity of the parties – both parties are capable of entering into the agreement
- Legality of purpose – the purpose of the agreement is legal

# Conditions that may lead to the unwinding of the deal

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- Meeting of the Minds may be affected by
  - Mistakes in the scope of services or requirements
  - Misrepresentations or information omitted that may change the conditions for performance
  - Assignment or Novation – changes to vendor ownership that may result in changes to the agreement
  - Frustration – Significant changes to conditions that may have negative impact on performance

# Summary:

## Importance of a well-defined Scope

<b>Impact on:</b>	<b>Complete Scope (clear &amp; concise)</b>	<b>Incomplete Scope (too broad or restrictive)</b>
Competition	Attracts more bidders	-Increase costs -Discourages vendors from bidding
Evaluation Process	-Easier to evaluate -Less chances for protests	Higher potential for misinterpretation and protests
Risk	Reasonable requirements translate into lower assumption of risk for bidder and University	Unreasonable requirements may lead to higher risk and higher costs
Contract	Change orders are minimized	-Uncertain level of effort required -Higher change order risk
Administration	More owner control and easier administration	Potential for contract management conflicts

# Contact Information

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