

Contracts 101

Best Practices

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CSDSIP Members large and small frequently arrange for the purchase of goods and services from individuals and companies. While entering into a contract might seem like an unnecessary formality for many of these transactions, a well-written contract serves several important purposes.

First, a good contract ensures that all parties are on the same page with regard to expectations and obligations. It describes what is being done, where and how, by whom, and when. Second, a good contract satisfies various legal requirements. Finally, a good contract appropriately allocates risk between the parties. It gives you options if the other party fails to deliver on time or meet agreed-upon standards and shields you from costs or delays if something goes wrong.

To accomplish these purposes, a good contract contains a number of different provisions, often called clauses. Although many clauses have similar headings or include similar language, the impact of each clause can vary significantly. Rather than reviewing and editing contracts from third parties every time a transaction is contemplated, Members should rely upon their own approved form agreements whenever possible.

The most important ingredient in a good contract is clarity. Describe the agreement as clearly as possible, using simple, easy-to-understand words. Examples can be helpful as well. The goal is for anyone who picks up the contract in the future – be it a week, a month, a year or a decade – to easily understand every detail of the agreement. Unclear language causes confusion, which in turn creates problems. If the other party isn't clear on performance expectations, then the likelihood that they will meet those expectations is diminished. In the event that things really go bad with the agreement, clear language is invaluable in assisting a judge or jury in interpreting the contract.

In addition to clear and understandable language, a good contract contains a number of standard clauses, often called boilerplate. Some boilerplate clauses should be present in and look the same for all contracts. Other clauses might read differently depending on the nature of the transaction. And some boilerplate clauses might be appropriate for some contracts and not for others.

For example, clauses that specify Colorado governing law and jurisdiction should always be included, as they are essential in protecting the Member. Clauses that require the contractor to perform criminal background checks on its employees and verify that they are eligible for employment in the United States are required by law. Members will also always want to include a clause that explicitly does not waive governmental immunity, thus guaranteeing that the Member retains the valuable protections of the Colorado Governmental Immunity Act.

Similarly, if the contract will extend into the next fiscal year, a non-appropriation clause (sometimes called a TABOR clause) must be present. This clause, required to satisfy the Colorado Constitution, allows the Member to cancel the contract if funds for future fiscal years are not made available.

Another common boilerplate clause requires the contractor to carry insurance. The level of insurance should vary depending on the nature of the transaction. For example, a leadership consultant working for a few days in a school district probably does not need to carry as much insurance as a general contractor constructing a new building. But all contractors should carry a minimal level of insurance, ideally not less than the limits the Member carries for itself.

All of the boilerplate clauses work to safeguard the Member if something goes awry and shift risk to the contractor. The flip side is that contractors often offer their own contracts with language drafted to protect them, at the expense of the Member. Reworking the other party's contract to be less in favor of the other party requires more effort than insisting that contractors sign your form agreement. For that reason, Members should adopt standard contracts designed to clearly describe each transaction, satisfy legal requirements, and protect the Member from risk.

For questions about contracts, especially language involving insurance and risk, or for sample contracts, please reach out to your Risk Programs or Risk Control contact at CSDSIP.