MANAGING AND MITIGATING CONTRACT RISKS

TOAL 2018
TEXAS, OKLAHOMA, ARKANSAS & LOUISIANA
OBJECTIVES

• DEFINING RISK MANAGEMENT

• UNDERSTANDING RISK

• IDENTIFYING AND PREPARING FOR RISKS

• RISK SAFEGUARDS

• ONGOING PREPARATION AND RESPONSE TO RISK
LEARNING OUTCOMES

- Understand risks are inherent to any process
- Develop a common understanding of risks
- Qualifying, planning for, eliminating and/or mitigating risk
- Establishing and building risk safeguards
- Ensuring capabilities for preparing for and responding to risk
CONTRACTING HAS THE “INHERENT” POTENTIAL TO CREATE MANY RISKS. MANAGING RISKS PROTECTS THE INSTITUTION FROM LOSS. THEREFORE, IT IS STRONGLY RECOMMENDED ALL INSTITUTIONS HAVE WRITTEN POLICIES REGARDING RISK MANAGEMENT IN CONTRACTING.
DEFINING RISK MANAGEMENT

WHETHER POSITIVE OR NEGATIVE, RISK MANAGEMENT IS THE IDENTIFICATION, ANALYSIS, ASSESSMENT, CONTROL AND AVOIDANCE, MINIMIZATION, OR ELIMINATION OF UNACCEPTABLE RISKS.
POSITIVE RISK IS THE CHANCE A PROJECT’S OBJECTIVES WILL PRODUCE TOO MUCH OF A GOOD THING AND IS DETERMINED TO BE AS UNDESIRABLE AS A NEGATIVE RISK.
THE PURPOSE OF RISK MANAGEMENT IS TO:

• IDENTIFY AND LIST POTENTIAL RISKS

• ASSESS AND EVALUATE THE RISKS

• PLAN HOW TO REDUCE, MITIGATE, ELIMINATE, SHARE OR INCORPORATE RISKS
TO PROTECT THE UNIVERSITY AND IT’S INTERESTS, WE NEED TO BE PROACTIVE IN ASSESSING CONTRACT RISK. THEREFORE, WE SHOULD CONSIDER PERFORMING A CONTINUOUS ASSESSMENT BY REVIEWING CONTRACTS TO MITIGATE RISKS THAT WILL IN TURN ENHANCE THE BUSINESS WHILE INCREASING REVENUES AND REDUCING COSTS.
HOW DO YOU IDENTIFY RISKS?

COMMON (INHERENT) RISK CATEGORIES

- BUSINESS RISKS
- FINANCIAL RISKS
- PRODUCT RISKS
- SCHEDULING RISKS
- RECORDS RISKS
- TRAINING

- INTERNAL & EXTERNAL RISKS
- SECURITY RISKS
- PERSONNEL RISKS
- UNIVERSITY RISKS
- JURISDICTION
HOW DO YOU IDENTIFY RISKS?

COMMON RISK CATEGORIES DEFINED

BUSINESS RISK: COMPLIANCE (LEGAL); OPERATIONAL; STRATEGIC (PLANNING, ORGANIZING, IMPLEMENTING); START-UPS; ENTERING NEW MARKETS
HOW DO YOU IDENTIFY RISKS?
COMMON RISK CATEGORIES DEFINED

FINANCIAL RISKS:
INACCURATE BUDGET ESTIMATES; PAYMENT METHOD; AVAILABILITY OF FUNDS; CASH FLOW; PROFIT OR LOSS
HOW DO YOU IDENTIFY RISKS?

COMMON RISK CATEGORIES DEFINED

PRODUCT RISKS: QUALITY; ENVIRONMENTAL; AVAILABILITY; DELIVERY; OBsolescence
SCHEDULING RISKS: TIME CONSTRAINTS; IMPACT TO PERFORMANCE; IMPACT ON BUDGET; WEATHER
HOW DO YOU IDENTIFY RISKS?

COMMON RISK CATEGORIES DEFINED

RECORDS RISK: ACCESS; RESTRICTIONS; SECURITY; RETENTION (MONITORING AND MAINTAINING)
TRAINING RISKS: INITIAL AND ON-GOING; MANUALS; TRAINERS; ELECTRONIC ACCESS; TOOLS AND EQUIPMENT; COST; INTERRUPTION TO BUSINESS; APPLICABILITY OF CONTENT (CURRENT OR OBSOLETE)
HOW DO YOU IDENTIFY RISKS?
COMMON RISK CATEGORIES DEFINED

INTERNAL AND EXTERNAL RISKS:
IMPACT TO CAMPUS (HOW WILL THIS AFFECT OTHER DEPARTMENTS, STUDENTS OR SERVICES); HOW WILL THIS AFFECT VENDOR RELATIONS, PUBLIC PERCEPTION, COMMUNITY OR OTHER BUSINESSES OR MUNICIPALITIES
HOW DO YOU IDENTIFY RISKS?

COMMON RISK CATEGORIES DEFINED

SECURITY RISKS: ACCESS (PHYSICAL AND ELECTRONIC); LOCATION; TECHNOLOGY; DATA RECEPTION AND TRANSMISSION; RECORDS, CREDIT CARDS; STUDENT AND PERSONNEL INFORMATION (FERRPA, HIPPA)
HOW DO YOU IDENTIFY RISKS?
COMMON RISK CATEGORIES DEFINED

PERSONNEL: SECURITY; LIABILITY (INJURY, DEATH OR DISABILITY); LOSS; HAZMAT; PHYSICAL REQUIREMENTS OR CONSTRAINTS
UNIVERSITY RISKS:
PRODUCTS, PROPERTY,
SERVICES, STUDENTS,
PERSONNEL AND
EQUIPMENT

HOW DO YOU IDENTIFY RISKS?
COMMON RISK CATEGORIES DEFINED
HOW DO YOU IDENTIFY RISKS?
COMMON RISK CATEGORIES DEFINED

JURISDICTION RISKS:
GOVERNING LAW
(FEDERAL, STATE, LOCAL
AND/OR FOREIGN)
At the beginning or initiation of the contract process the Contracting Team Lead and the Contract Specialist need to conduct a preliminary risk assessment. And, to determine the level, the type and amount of management, oversite and resources required to implement, plan and procure the products or services.
HOW DO YOU IDENTIFY RISKS?

A CRADLE TO GRAVE PROCESS

NOTE: The Risk Management process is **ongoing**, from **cradle to grave**, to ensure the contract is fully performed, the final payment is made and the contract is closed out. In other words, those involved with the contract must understand the risk assessment process involves reviewing and evaluating the contract on a continual basis. The more long term the contract, the more oversite is needed.
HOW DO YOU IDENTIFY RISKS?

THE IDENTIFICATION PROCESS

• FROM PAST EXPERIENCE
• BY REVIEWING OLD CONTRACTS / OTHER CONTRACTS
• BRAINSTORMING

(BUSINESS, FINANCIAL, PRODUCT, SCHEDULING, RECORDS, TRAINING,
INTERNAL & EXTERNAL, SECURITY, PERSONNEL, UNIVERSITY, JURISDICTION)
PREPARATION FOR RISK

• UNDERSTAND THE ENVIRONMENT
• IDENTIFY THE RISKS
• ANALYZE THE RISKS
• EVALUATE THE RISKS
• RESPONSE TO RISKS
UNDERSTAND THE ENVIRONMENT – IN ORDER TO DEAL WITH RISK IT IS IMPORTANT TO UNDERSTAND THE CONTEXT IN WHICH IT EXISTS. THEREFORE, YOU MUST IDENTIFY THE RELATIONSHIP OF THE RISK TO THE ENVIRONMENT IN WHICH IT OPERATES.
IDENTIFY THE RISKS – WHAT COULD GO WRONG? WHAT IS THE LIKELIHOOD IT WILL GO WRONG? WHAT ARE THE CONSEQUENCES IF IT DOES GO WRONG?
Analyze the risks – what is the likelihood and the consequences of the risk? What is the risk (priority) level? Will it require ongoing monitoring?

Analyze risk with these 3 rules:

1. Don’t risk a lot for a little.
2. Don’t risk more than you can afford to lose.
3. Consider the odds.

Dan Amos, Aflac
EVALUATE THE RISK – PRE-ESTABLISHED RISK CRITERIA AND THE RISK ANALYSIS HELP DETERMINE WHETHER THE RISKS CAN BE ACCEPTED, ELIMINATED, MITIGATED OR BUILT INTO THE PROCESS
The response to risks is to develop strategic actions to determine what options are required to reduce, mitigate, eliminate, share or incorporate risks.
# RESPONSE TO RISK
EVALUATE AND ANALYZE

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<th>LIKELIHOOD RATING</th>
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### RESPONSE TO RISK
### EVALUATE AND ANALYZE

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<th>LIKELIHOOD</th>
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<td>Description</td>
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<tr>
<td><strong>EXTREME</strong></td>
<td>Highly probable, potentially serious risks that are likely to happen that require immediate, urgent attention.</td>
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<tr>
<td><strong>MAJOR</strong></td>
<td>Very likely to arise, potentially major risks that are likely to happen that require immediate, urgent attention.</td>
</tr>
<tr>
<td><strong>MEDIUM</strong></td>
<td>Very likely to arise, potentially major risks that are likely to happen that require attention.</td>
</tr>
<tr>
<td><strong>MINOR</strong></td>
<td>Minor, low consequence risks that are manageable by standard methods and procedures.</td>
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RESPONSE TO RISK

- Accepting the risk
- Avoiding the risk
- Reducing the risk
- Transferring the risk
- Retaining the risk
- Financing the risk
RESPONSE TO RISK

ACCEPTING RISK – DETERMINING THAT THE POTENTIAL LOSS OR COST OF A RISK IS NOT GREAT ENOUGH TO WARRANT THE TIME, MONEY AND EFFORT TO ELIMINATE
RESPONSE TO RISK

AVOIDING RISK – THE ELIMINATION OF IDENTIFIED CONTROLLABLE RISKS THAT CAN COMPROMISE THE PROJECT.
RESPONSE TO RISK

REDUCING RISKS – IS THE PROCESS OF REDUCING THE LIKELIHOOD OR THE SEVERITY OF A POSSIBLE LOSS
A RISK TRANSFER is a RISK MANAGEMENT AND CONTROL STRATEGY (a safeguard) that involves the contractual shifting of a PURE RISK from one party to another. One example is the purchase of an insurance policy, by which a specified RISK of loss is passed from the policyholder to the insurer.
A RISK SAFEGUARD IS A CLAUSE IN A CONTRACT THAT ENSURES PROTECTION AGAINST PROBLEMS (TRANSFER OF RISK); A PRECAUTIONARY OR COUNTER MEASURE THAT ENABLES AN ORGANIZATION TO PROTECT ITSELF FROM THREAT OR THE INFRINGEMENT OF AN AGREEMENT.
FINANCING RISK – DETERMINING THE MOST EFFECTIVE, EFFICIENT AND THE LEAST COSTLY WAY TO PAY FOR THE NEGATIVE IMPACT OR, THE COST TO ELIMINATE, RISKS.
INDEMNIFICATION (HOLD HARMLESS) – OBLIGATES ONE PARTY TO COMPENSATE THE OTHER PARTY FOR LOSSES OR DAMAGES (PHYSICAL OR MONETARY)
LIMITATION OF LIABILITY – LIMITS THE AMOUNT PAYABLE IN DAMAGES FOR BREACH OF CONTRACT

WAVER OF SUBROGATION – OCCURS WHEN AN INSURANCE COMPANY PAYS THE INSURED AND THEN SUES THE PERSON OR ORGANIZATION RESPONSIBLE.
INSURANCE - ASSET (FINANCIAL) PROTECTION
BONDS (SURETY, PERFORMANCE, PAYMENT); AUTO;
WORKERS COMP; LIABILITY; ETC.

PENALTY CLAUSES - PERFORMANCE; COMPLETION;
COMPETENCE; BREACH OF CONTRACT; ETC.
I repeat things for emphasis. EMPHASIS!
THE ONGOING GOAL:
IDENTIFY EVERYTHING THAT CAN, WILL OR MAY HAPPEN
IDENTIFY, ASSESS, EVALUATE, RANK
AND PLAN FOR ALL SIGNIFICANT
RISKS AND OPPORTUNITIES
PREPARATION FOR RISK

• UNDERSTAND THE ENVIRONMENT
• IDENTIFY THE RISKS
• ANALYZE THE RISKS
• EVALUATE THE RISKS
• RESPONSE TO RISKS
COMMON (INHERENT) RISK CATEGORIES

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- UNIVERSITY RISKS
- JURISDICTION
RESPONSE TO RISK

- ACCEPTING THE RISK
- AVOIDING THE RISK
- REDUCING THE RISK
- TRANSFERRING THE RISK
- RETAINING THE RISK
- FINANCING THE RISK
QUESTIONS
THANK YOU!
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