

Contracting and Risk

Using Contracts to Mitigate Risk



Presented by:

Greg Shabram, Chief Procurement Officer, PCS

O

Overview



- Our Purpose and Risk Philosophy
- Financial Risks
- Operational Risk
- Reputational Risk
- Fraud
- Compliance Risk



O

Role of PCS



Our Mission

Purchasing and Contracting Services (PCS) is a team of business professionals dedicated to public service and advancing the university's mission. We are a service unit that empowers campus stakeholders to accomplish their goals, while successfully **balancing efficiency, innovation, and risk**. We accomplish this mission by:

- Obtaining the best value for the university and its stakeholders;
- Providing timely, creative, strategic, and practical business services;
- Fostering a climate of good faith, fair dealing, and compliance;
- Promoting access to university business opportunities;
- Partnering in the development and execution of university initiatives.



Values and Risk Philosophy



Our Values

- Obtain best value by minimizing the Total Cost of Ownership of goods, services, systems, policies, and processes.
- Understand that change is constant and inevitable: plan for and make incremental, managed change.
- Continuously improve.
- Use systems to make rule based decisions; use people to make decisions that require discretion and thought.
- **Know that risk cannot be eliminated, only mitigated: avoiding all risk eliminates all opportunity.**
- Be proactive; not reactive.
- Approach conflict from a “Me→Us→You” perspective.
- Value everyone’s contribution, understand other’s perspective.
- Communicate in a manner that is accessible to our audiences.
- Always offer solutions to add value.



Financial Risks



- Distributing Liability
- Ensuring recovery of damages

Distributing Liability



- Only accept liability for things you can control
- Indemnification Terms?
- Sovereign Immunity and the Tort Claims Act
 - Never waive it
 - Example, Oracle and the State of Oregon

Recovering



- Liquidated damages
- Insurance requirements
 - UO has high deductible (lower cost)
 - We attempt to minimize costs by requiring vendors to carry insurance
- Data recovery
- Software escrow
- Cost of replacement
- Lost revenue? Consequential damages?
Probably not.

Operational Risk



- How critical are the goods or services to our operations?
- What would happen if the goods or services are unavailable?
- Does our use or receipt of the good or services create liability?

Operational Risk Examples



- Cheetahs at JSMA!
- Whitewater rafting!
- Data security: ISO 27001, SOC 2 or HECVAT?
- Driving automobiles
- **Inability to change quickly**



O

Reputational Risk



- What will people think?
- Hard costs may pale in comparison
 - Threatens enrollment and funding
- Example: Boeing 737 MAX MCAS System
- Sam.gov
- Awareness of market conditions and current events

Fraud Prevention

THE FRAUD TRIANGLE



- Lack of internal controls
- Override of existing controls
- Lack of management review
 - Perception of detection is directly correlated to the occurrence of occupational fraud.
 - Active management plays a key role.

Compliance Risk



- Higher Ed is highly regulated:
 - FERPA
 - HIPAA
 - Title IX
 - Civil Rights Laws
 - ADA
 - Public Records Laws
 - NCAA Rules
 - Uniform Guidance
 - Agency level regulations
 - GDPR
 - Conflicts of interests laws
 - BOLI
 - IRS
 - Export Controls
 - ITAR and DOD?
 - **And Many More!**



O

UO Code of Ethics



- All UO employees must commit to follow the [code of ethics](#) annually.
- Covers four broad categories:
 - Best Value
 - Fairness
 - Honesty and Good Faith
 - Legal Compliance



O

Conflicts of Interest

- **Oregon government ethic laws prohibit public officials from using office for financial gain, and require public disclosure of economic conflicts of interest.**
 - This includes benefits that may be enjoyed by you, a relative (children, parents, spouse, and children or parents of spouse), or a member of your household (individuals that reside with you).
- You or your relatives are “associated” with a business if during the preceding calendar year that person:
 - Held an equity interest or debt instrument over:
 - \$1,000 in a privately held firm,
 - \$100,000 or more in a publicly held corporation
 - Is a director or officer of a publicly held corporation.

UO employees should remove themselves from transactions where they have either an actual or potential conflict of interest.



Questions?

